

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.85148 of 2023

Arising Out of PS. Case No.-278 Year-2023 Thana- KOTWA District- East Champaran

1. Anil Kumar Yadav S/O Lalit Yadav R/O Village-Chaubey Tola, P.S-Bhopatpur, District-East Champaran.
2. Raja Babu Kushwaha S/O Awadhesh Prasad Kushwaha R/O Village-Purani Dina Bhopatpur, P.S-Bhopatpur, District-East Champaran.

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Abhishek Kumar

For the Opposite Party/s : Mr.Tarkeshwar Nath Thakur

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 24-01-2024 Learned counsel for the petitioners is permitted to remove the defect(s), as pointed out by the office, if any, within a period of three weeks from today.

2. Heard learned counsel for the petitioners and learned Additional Public Prosecutor for the State.

3. Learned counsel for the petitioners submits that the petitioner No. 1 has been arrested. Accordingly, he seeks permission to withdraw the present application.

4. Permission is accorded.

5. Accordingly, the present application of petitioner No. 1 is dismissed as withdrawn.

6. The Petitioner is apprehending his arrest in



connection with Kotwa P.S Case No. 278/2023 dated 23.07.2023 for the offences punishable under Sections 272 and 273 of the IPC and Sections 30(a), 32, 36, 41(1) of the Bihar Prohibition and Excise Act.

7. As per the prosecution case, total 750.6 litres of illicit liquor has been recovered from the Pick-up van and Maruti Alto car.

8. Learned counsel for the petitioner has submitted that the petitioner has falsely been implicated in this case. The petitioner has no criminal antecedent as stated at para 3 of the bail petition. No incriminating article has been recovered from the conscious possession of the petitioner, hence no case is made out. The petitioner is neither the owner nor the driver of the said vehicles. Learned Counsel has relied on the judgment of Full Bench of Hon'ble Patna High Court in the case of **Ram Vinay Yadav vs. State of Bihar reported in 2019 (2) PLJR 1089**. The Full Bench in the case of **Ram Vinay Yadav (supra)** has held that an application for anticipatory bail in a case arising out of Bihar Excise and Prohibition Act can be maintained, despite the bar under Section 76 (2) of the Act, if on the basis of allegation made in the FIR, no offence under the said provision is made out.



9. Learned A.P.P. for the State has vehemently opposed the prayer for anticipatory bail of the petitioner by submitting that the bar of Section 76(2) of the Act applies in this case.

10. Considering the aforesaid facts and circumstances of the case as well as the nature of allegation against the petitioner, let the above named petitioner, in the event of his arrest/surrender within a period of six weeks from today, be enlarged on anticipatory bail on furnishing bail-bond of Rs. 20,000/- (Rupees twenty thousand) with two sureties of the like amount each to the satisfaction of the learned court concerned, Motihari, East Champaran in connection with Kotwa P.S. Case No. 278 of 2023, subject to conditions as laid down under section 438(2) of the Code of Criminal Procedure.

(Chandra Prakash Singh, J)

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