

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.85178 of 2023

Arising Out of PS. Case No.-327 Year-2023 Thana- LALGANJ District- Vaishali

1. Jitan Kumar @ Jitan Paswan S/o Late Sakal Paswan R/o Vill- Kharauna @ Misrauliya, P.S.- Lalganj, Dist.- Vaishali.
2. Kabir @ Kabir Thakur S/o- Mahabir Thakur R/o Vill- Mathurapur @ Jalapur , P.S.- Lalganj, District - Vaishali.

... .. Petitioner/s

Versus

The State Of Bihar Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Rajeev Ranjan, Adv.

For the Opposite Party/s : Mr.Umeshanand Pandit, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 24-01-2024 Heard learned counsel for the petitioners and learned Additional Public Prosecutor for the State.

2. The petitioners are apprehending their arrest in a case in connection with Lalganj P.S. Case No. 327 of 2023 dated 17.09.2023 registered for the offences punishable u/s 30(a) of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, total 35 litres of illicit country made *chulai* liquor was recovered from the Bathan, the motorcycle and the house of the co-accused, Lal Babu Paswan.

5. Learned counsel for the petitioners has submitted that the petitioners have falsely been implicated in this case. The petitioners have no criminal antecedent as stated in para 3 of the



bail petition. The name of the petitioners was disclosed by local people. The petitioner no. 2 is the owner of the said motorcycle and the same was not being driven by the petitioner no. 2 at the time of the alleged recovery. Nothing has been recovered from the conscious possession of the petitioners rather the recovery has been made from the co-accused person, hence no case is made out. 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.

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

6. Considering the aforesaid facts and circumstances of the case as well as the nature of allegation against the petitioners, let the above named petitioners, in the event of their



arrest/surrender within a period of six weeks from today, be enlarged on bail on furnishing bail-bond of Rs. 20,000/- (Rupees Twenty thousand) each with two sureties of the like amount each to the satisfaction of learned court concerned, Vaishali at Hajipur in connection with Lalganj P.S. Case No. 327 of 2023, subject to conditions as laid down under Section 438(2) of the Code of Criminal Procedure.

7. This application stands allowed.

(Chandra Prakash Singh, J)

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