

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.733 of 2024

Arising Out of PS. Case No.-390 Year-2023 Thana- SAHPUR District- Bhojpur

1. Rajesh Yadav Son Of Govardhan Yadav Resident Of Village - Mahuar Ward No.5, P.S. - Nainijor, District - Buxar
2. Saroj Kumar Yadav @ Saroj Yadav Son Of Tejnarayan Yadav Resident Of Village - English Mahuar, P.S. - Shahpur, District - Bhojpur

... .. Petitioner/s

Versus

THE STATE OF BIHAR BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Arun Kumar Gupta, Adv.

For the Opposite Party/s : Mr.Md. Aslam Ansari, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 31-01-2024 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 Shahpur P.S. Case No. 390 of 2023 dated 30.08.2023 registered for the offences punishable u/s 30(a) of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, total 60 litres of illicit liquor was recovered from the motorcycle.

4. Learned counsel for the petitioners has submitted that the petitioners are innocent and have falsely been implicated in this case. The petitioner no. 1 has five criminal antecedents whereas the petitioner no. 2 has no criminal



antecedent as stated at para 3 of the bail petition. The name of the petitioners was disclosed by local people. The petitioners are not the owner of the said motorcycle and the same was not being driven by the petitioners at the time of alleged recovery. Nothing has been recovered from the conscious possession of the petitioners, 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.

5. 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, Bhojpur, Ara in connection with Shahpur P.S. Case No. 390 of 2023, subject to conditions as laid down under Section 438(2) of the Code of Criminal Procedure with further condition :-

(i) The petitioner no. 1, Rajesh Yadav is directed to remain physically present before the learned Court below on each and every date, failing which on two consecutive dates without reasonable cause, the prosecution will be at liberty to move for cancellation of his bail bond.

7. This application stands allowed.

(Chandra Prakash Singh, J)

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