

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.86391 of 2023

Arising Out of PS. Case No.-161 Year-2023 Thana- AWTARNAGAR District- Saran

1. Akhilesh Mahto S/o- Daroga Mahto R/o Vill- Madanpur Bintoli, P.S- Awtar Nagar, Dist- Saran
2. Sudish Mahto @ Sudish Kumar S/o- Butan Mahto R/o Vill- Madanpur Bintoli, P.S- Awtar Nagar, Dist- Saran

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Harish Kumar

For the Opposite Party/s : Mr.Binod Kumar

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 29-01-2024 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. The petitioners are apprehending their arrest in connection with Awatar Nagar P.S. Case No. 161 of 2023 dated 05.06.2023 registered for the offences punishable u/s 30(a) of the Bihar Prohibition and Excise Act.

4. As per the prosecution case, total 50 litres of illicit liquor kept in two sacks was recovered near the house of the petitioner No. 1. Villagers disclosed the name of the petitioners.



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. No incriminating article has been recovered from the conscious possession of the petitioners, hence no case is made out. The recovery is made from an open place which is accessible to anyone. 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.

7. Considering the aforesaid facts and circumstances of the case as well as the nature of allegation against the petitioners, in the event of their 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) each with two sureties of the like amount each to the satisfaction of learned Court concerned, Chapra, Saran in connection with Awatar Nagar P.S. Case No. 161 of 2023, subject to conditions as laid down under Section 438(2) of the Code of Criminal Procedure.

8. This application stands allowed.

(Chandra Prakash Singh, J)

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