

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.86403 of 2023

Arising Out of PS. Case No.-577 Year-2023 Thana- BIRAUL District- Darbhanga

1. Chaudhari Mukhiya @ Choudhary Mukhiya Son of Mahendra Mukhiya R/o vill - Navtol, P.s. - Biraul, Dist. - Darbhanga
2. Anil Mukhiya Son of Mahendra Mukhiya R/o vill - Navtol, P.s. - Biraul, Dist. - Darbhanga

... .. Petitioner/s

Versus

The State of Bihar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Nilendu Kumar Choudhary, Advocate.
For the Opposite Party/s : Mr. Shantanu Kumar, A.P.P.

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 30-01-2024 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 Biraul P.S Case No. 577 of 2023 dated 29.11.2023 for the offences punishable u/s 30(a) of the Bihar Prohibition and Excise Act.

4. As per the prosecution case, total 80.400 litres of illicit liquor was recovered from the house of the



petitioners.

5. Learned counsel for the petitioners has submitted that the petitioners are innocent and have falsely been implicated in this case. It is further submitted that as per the seizure list the recovery of place has not been mentioned but as per the F.I.R. the recovery has been made from the house of the petitioners which created doubt upon the prosecution case. Learned counsel has further submitted that local chaukidar disclosed the name of the petitioners. The petitioners have two criminal antecedents as stated at 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. 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, let the above named 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) with two sureties of the like amount each to the satisfaction of the learned court concerned, Darbhanga in connection with Biraul P.S Case No. 577 of 2023, subject to conditions as laid down under section 438(2) of the Code of Criminal Procedure.

(Chandra Prakash Singh, J)

Nilmani/-

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