

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.1534 of 2024

Arising Out of PS. Case No.-390 Year-2023 Thana- PHULWARIYA District- Gopalganj

1. Sunil Yadav S/O Suresh Yadav R/O- MARDWANI, PS. PHULWARIYA, DISTT. GOPALGANJ.
2. AJAY YADAV S/O LATE GARJU YADAV R/O- MARDWANI, PS. PHULWARIYA, DISTT. GOPALGANJ.

... .. Petitioner/s

Versus

The State of Bihar BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Deepankar Raj, Adv.

For the Opposite Party/s : Mr. Manoj Kumar, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 01-02-2024 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 Phulwariya P.S. Case No. 390 of 2023 dated 03.11.2023 registered for the offences punishable u/s 30(a) of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, total 135 litres of illicit country made liquor was recovered from the motorcycles and a gunny bag.

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 four criminal



antecedents whereas the petitioner no. 2 has seven criminal antecedent as stated at para 3 of the bail petition. The name of the petitioners was disclosed by local people. The petitioner has no concern with the said vehicle and the same was not being driven by the petitioner 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, Gopalganj in connection with Phulwariya 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 petitioners are 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 thier bail bond.

7. This application stands allowed.

(Chandra Prakash Singh, J)

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