

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.3633 of 2024

Arising Out of PS. Case No.-197 Year-2023 Thana- GOVINDGANJ District- East
Champaran

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1. Kolai Mukhiya S/O Birendra Mukhiya R/O Village- Koirgawan, P.S. Sangrampur, District- East Champaran
 2. Ajay Mukhiya S/O Biltu Mukhiya R/O Village- Koirgawan, P.S. Sangrampur, District- East Champaran

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Abhishek Kumar

For the Opposite Party/s : Mr. Akbar Ali

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 09-02-2024 Learned counsel for the petitioners is directed 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 Govindganj (Areraj) P.S. Case No. 197 of 2023, dated 09.04.2023 for the offences punishable under Sections 272 & 273 of the Indian Penal Code and under section 30(a) of the Bihar Prohibition and Excise Act.

4. As per the prosecution case, total 85 litres of country made liquor was recovered from the bag alleged to be



thrown by the petitioners.

5. 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 three criminal antecedents of similar nature stated in para 3 of the bail petition in which he is on bail whereas the petitioner no. 2 has five criminal antecedents of similar nature in which he is on bail. The name of the petitioners was disclosed by local chowkidar. No incriminating material has been recovered from the conscious possession of the petitioners, hence no case is made out against the petitioner. 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 APP for the State has vehemently opposed the prayer for anticipatory bail of the petitioner 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 petitioner, 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 the learned court concerned, Motihari, East Champaran in connection with Govindganj (Areraj) P.S. Case No. 197 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 his bail bond.

8. The application stands allowed.

(Chandra Prakash Singh, J)

Ranjeet/-

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