

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.72709 of 2023

Arising Out of PS. Case No.-489 Year-2023 Thana- BARACHATTI District- Gaya

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1. Samful Devi W/O Gyani Mistry R/O Village -TETARIYA Khurd, P.S.- Barachhatti, District- Gaya
 2. Gyani Mistry Son Of Raghunandan Mistri R/O Village -TETARIYA Khurd, P.S.- Barachhatti, District- Gaya

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Brij Mohan Das

For the Opposite Party/s : Mr.Suresh Prasad Singh

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 22-11-2023 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 Barachhatti P.S. Case No. 489 of 2023 dated 23.05.2023 registered for the offence punishable u/s 30(a) of the Indian Penal Code.

4. As per the prosecution case, total 10.035 litres of illicit liquor was recovered from the motorcycle.

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 petitioner, hence no case is made out. It is further submitted that the petitioners are husband and wife and the petitioner No. 1 is implicated in this case only because she is the owner of the seized motorcycle. 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, 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) each with two sureties of the like amount each to the satisfaction of learned Court concerned, Gaya in connection with Barachhatti P.S. Case No. 489 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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