

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.76969 of 2023

Arising Out of PS. Case No.-344 Year-2023 Thana- PAKARIBARAW District- Nawada

1. Birendra Yadav Son Of Arjun Yadav Resident Of Village - Morama Ward No.5, P.S. - Roh, District - Nawada (BIHAR)
2. Surendra Yadav Son Of Arjun Yadav Resident Of Village - Morama Ward No.5, P.S. - Roh, District - Nawada (BIHAR)
3. Uday Kumar Mahto @ Uday Kumar Son Of Rajendra Mahto Resident Of Village - Morama Ward No.5, P.S. - Roh, District - Nawada (BIHAR)

... .. Petitioner/s

Versus

The State Of Bihar Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Subodh Kumar, Advocate

For the Opposite Party/s : Mr. Tarkeshwar Nath Thakur, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 19-12-2023 Heard learned counsel for the petitioners and learned counsel for the State.

2. Learned counsel for the petitioners seeks permission to withdraw the present application for the petitioner no. 2 (Surendra Yadav).

3. Permission is accorded.

4. Accordingly, the present application for the petitioner no. 2 (Surendra Yadav) is dismissed as withdrawn.

5. The petitioners are apprehending their arrest in a case in connection with Pakribarawan P.S. Case No. 344 of 2023 dated 04.08.2023 for the offence/s punishable u/ss 30(a) and 30(d) of the Bihar Prohibition and Excise Act.



6. As per the prosecution case, total three drums of sweet Mahua solution and 5 litres of illicit liquor were recovered near the bush situated between the farm of Ramkishun Mahto and Birendra Yadav.

7. Learned counsel for the petitioners has submitted that the petitioners have falsely been implicated in this case. Nothing has been recovered from the conscious possession of the petitioners. The recovery is made from an open place that is accessible to anyone. The petitioners have no concern with the alleged recovery. The petitioners have no criminal antecedents as stated in para 3 of the bail petition. Learned counsel has submitted that no case is made out against the petitioners. Learned Counsel has relied on the judgment of Full Bench of the Hon'ble Patna High Court in the case of **Ram Vinay Yadav vs. State of Bihar 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.

8. 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.

9. Considering the aforesaid facts and circumstances of the case as well as the material available on record, let the above



named petitioner no. 1 and 3 i.e. Birendra Yadav and Uday Kumar Mahto@ Uday Kumar, 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, Nawada in connection with Pakribarawan P.S. Case No. 344 of 2023, subject to conditions as laid down under section 438(2) of the Code of Criminal Procedure.

10. The application for the petitioner no. 1 and 3 i.e. Birendra Yadav and Uday Kumar Mahto @ Uday Kumar stands allowed.

(Chandra Prakash Singh, J)

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