

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.76143 of 2023

Arising Out of PS. Case No.-605 Year-2023 Thana- MAHUA District- Vaishali

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1. Mamta Kumari W/O- Dharmendra Kumar R/O- Village- Sharma, P.S.- Mahua, Dist.- Vaishali
 2. Dharmendra Kumar S/O- Ramchandra Rai R/O- Village- Sharma, P.S.- Mahua, Dist.- Vaishali

... .. Petitioner/s

Versus

The State Of Bihar Bihar, Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr .Bhola Prasad, Advocate

For the Opposite Party/s : Mr. Shyam Bihari Singh, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 13-12-2023 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 a case in connection with Mahua P.S. Case No. 605 of 2023 dated 09.09.2023 for the offence/s punishable u/ss 272, 273 read with section 34 of the IPC and section 30(a) of the Bihar Prohibition and Excise Act.

4. As per the prosecution case, total 60 litres of illicit foreign liquor was recovered from the hut, car and motorcycle.

5. 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 petitioners have no concern either with the alleged recovery or the said hut. The car in question does not belong to the petitioners. The petitioner no. 1 is a lady. 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.

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 material available on record, 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 the learned court concerned, Vaishali at Hajipur in connection with



Mahua P.S. Case No. 605 of 2023 , subject to conditions as laid down
under section 438(2) of the Code of Criminal Procedure.

8. The application stands allowed.

(Chandra Prakash Singh, J)

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