

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.8703 of 2024

Arising Out of PS. Case No.-231 Year-2018 Thana- SASARAM MUFFSIL District- Rohtas

1. Upadhya Mahto @ Upadheya Mahto S/O LATE DUKHI MAHTO R/O VILLAGE- DAHIYAR, PS.- SASARAM (M), DIST. ROHTAS.
2. JITAN MAHTO S/O LATE DUKHI MAHTO R/O VILLAGE- DAHIYAR, PS.- SASARAM (M), DIST. ROHTAS.

... .. Petitioner/s

Versus

The State of Bihar BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Rajani Kant Singh

For the Opposite Party/s : Mr.Ashok Kumar Singh

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 21-02-2024 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 Sasaram (M) P.S. Case No. 231 of 2018 dated 04.02.2018 for the offence/s punishable u/s 414 and sections 30(a), 34 and 38 of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, total 80 litres of illicit country made liquor was recovered from the three different motorcycles and the two sacks.

4. Learned counsel for the petitioners has submitted that the petitioners are innocent and have falsely been implicated in this case. Nothing has been recovered from the conscious possession of the petitioners. The petitioners are neither the owner nor the driver of



the said vehicles. The petitioners have no concern with the alleged recovery. The apprehended co-accused disclosed the name of the petitioners. The petitioners have eight other 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.

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 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, Rohtas at Sasaram in connection with Sasaram (M) P.S. Case No. 231 of 2018, subject to conditions as laid



down under section 438(2) of the Code of Criminal Procedure, with further condition/s:-

(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 bail bonds of the petitioners are liable to be cancelled.

7. The application stands allowed.

(Chandra Prakash Singh, J)

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