

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.14999 of 2024

Arising Out of PS. Case No.-294 Year-2023 Thana- BENIPATTI District- Madhubani

1. Umesh Mahto @ Umesh Kumar Mahto S/o Rajendra Mahto R/o Vill - Bankatta, Ward No. 6, P.S. - Benipatti, Dist. - Madhubani
2. Agnidev Mahto @ Agindev Mahto S/o Rajendra Mahto R/o Vill - Bankatta, Ward No. 6, P.S. - Benipatti, Dist. - Madhubani

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Gagan Deo Yadav, Adv. Mr. Ravi Prakash, Adv. Mr. Udeshya Kumar Yadav, Adv.
For the Opposite Party/s	:	Mr. Lakshmi Kant Sharma, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 07-03-2024 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 Benipatti P.S. Case No. 294 of 2023 dated 29.12.2023 registered for the offences punishable u/ss 272, 273 read with Section 34 of the Indian Penal Code and u/s 30(a) of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, total 73.8 litres of illicit Nepali saufi liquor was recovered from the field situated behind the baithka of the co-accused, Rajendra Mahto who disclosed the name of the petitioner.

4. 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 two criminal antecedents whereas the petitioner no. 2 has one criminal antecedent as stated in para 3 of the bail petition. The name of the petitioners has sprung up in the confessional statement of the co-accused, Rajendra Mahto. The petitioners have no concern with the alleged recovery rather the recovery has been made from the baithka of the co-accused person. Nothing has been recovered from the conscious possession of the petitioners, hence no case is made out. 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.

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 the record, let the above named petitioners, in the event of their arrest/surrender within a period of six weeks from today, be enlarged on 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, Madhubani in connection with Benipatti P.S. Case No. 294 of 2023, subject to conditions as laid down under Section 438(2) of the Code of Criminal Procedure.

7. This application stands allowed.

(Chandra Prakash Singh, J)

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