

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.23957 of 2024

Arising Out of PS. Case No.-27 Year-2024 Thana- MUSAHARI District- Muzaffarpur

1. Rishi Kumar @ Rishu Kumar Son of Uma Guptha @ Uma Gupta Resident of Village- Nayagaon, P.O.- Nayagaon, Police Station-Mushahari, District- Muzaffarpur
2. Param Ram Sharma @ Pramran Sharma Son of Ram Kumar Sharma Resident of Village- Chapra Rupnath, P.O.- Chapra Megh, Police Station- Mushahari, District- Muzaffarpur

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Samir Kumar, Adv.
For the Opposite Party/s : Mr.Khurshid Anwar, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 09-04-2024 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 Mushahari P.S. Case No. 27 of 2024 dated 22.01.2024 for the offence/s punishable u/ss 272 and 273 read with section 34 of the IPC and 30(a) of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, total 263.52 litres of illicit foreign liquor was recovered near the temple under the mango and litchi tree.

4. Learned counsel for the petitioners has submitted



that the petitioners are innocent and have falsely been implicated in this case. No incriminating material has been recovered from the conscious possession of the petitioners. The recovery was made from an open place that is accessible to anyone. The name of the petitioners has transpired on mere suspicion. The petitioners have no concern with the alleged recovery. The petitioner no. 1 has one and the petitioner no. 2 has three 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 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 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, Muzaffarpur in connection with Mushahari P.S. Case No. 27 of 2024, subject to conditions as laid down under section 438(2) of the Code of Criminal Procedure.

7. The application stands allowed.

(Chandra Prakash Singh, J)

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