

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.28413 of 2024

Arising Out of PS. Case No.-31 Year-2024 Thana- SAMASTIPUR MUFFASIL District-
Samastipur

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1. Chottu Kumar S/O Late Raghunath Mahto R/O Village- Lagunia Raghukanth, P.S- Samastipur Mufassil, Distt.- Samastipur.
 2. Shail Devi W/O Late Raghunath Mahto R/O Village- Lagunia Raghukanth, P.S- Samastipur Mufassil, Distt.- Samastipur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

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

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

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 20-04-2024 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 Samastipur Mufassil P.S. Case No. 31 of 2024 dated 18.01.2024 registered for the offence punishable u/s 30(a) of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, total 15.135 litres of illicit foreign liquor was recovered from the house of the petitioner no. 1, Chottu Kumar.

4. Learned counsel for the petitioners has submitted that the petitioners are innocent and have falsely been implicated in this case. The petitioners have no criminal



antecedent as stated in para 3 of the bail petition. Nothing has been recovered from the conscious possession of the petitioners hence, no case is made out against the petitioners. Local *chowkidar* disclosed the name of the petitioners. The petitioner no. 2 is made accused in this case only because she is mother of the petitioner no. 1, Chottu Kumar. 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. It is further submitted that the recovery was made from the house of the petitioner no.1, Chottu Kumar.

6. Considering the aforesaid facts and circumstances of the case as well as the nature of allegation against the petitioner no. 2, let the above named petitioner, Shail Devi, in



the event of his 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) with two sureties of the like amount each to the satisfaction of the learned court concerned, Samastipur in connection with Samastipur Mufassil P.S. Case No. 31 of 2024, subject to conditions as laid down under section 438(2) of the Code of Criminal Procedure.

7. This application stands allowed with regard to the petitioner no. 2.

8. So far as the petitioner no. 1, namely, Chottu kumar is concerned, considering the aforesaid facts and circumstances of the case as well as the fact that the alleged recovery was made from the house of the petitioner no. 1, Chottu Kumar, I am of the view that no case for grant of anticipatory bail is made out and the same is disposed off with direction to the petitioner No. 1, Chottu Kumar to surrender to the Court below within six weeks from the date of this order and the Court below shall consider the prayer of the regular bail of the petitioner no. 1 on the same day without being prejudice by this order.

(Chandra Prakash Singh, J)

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