

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.59678 of 2024

Arising Out of PS. Case No.-149 Year-2023 Thana- VISHAMBHARPUR District- Gopalganj

1. Sushila Devi wife of Janardhan Singh Village- Kala Matihiniya Ps- Bishambharpur Dist- Gopalganj P/A- Rampur Bangr Mathiya Sriram Ps- Tareya Sujan Dist- Kushinagar, U.P
2. Khushi Kumari D/o- Janardhan Singh Village- Kala Matihiniya Ps- Bishambharpur Dist- Gopalganj P/A- Rampur Bangr Mathiya Sriram Ps- Tareya Sujan Dist- Kushinagar, U.P

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Arvind Kumar, Adv.

For the Opposite Party/s : Mr. Ramchandra Sahni, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 04-10-2024 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 Bishambharpur P.S. Case No. 149 of 2023 dated 06.08.2023 for the offence/s punishable u/s 414 of the IPC and Section 30(a), 41 and 45 of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, total 133.200 litres of illicit country made liquor was recovered from the two different motorcycles and one cycle.

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 petitioners are neither the owner nor the driver of the said motorcycles. The petitioners have no concern with the alleged recovery. Local people disclosed the name of the petitioners. The petitioners have no criminal antecedent as stated in para 3 of the bail petition. The co-accused has been granted anticipatory bail by this Court vide order dated 31.01.2024 passed in Cr. Misc. No. 1463 of 2024. Learned counsel has submitted that no case is made out against the petitioners. 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 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) with two sureties of the like amount each to the satisfaction of the learned court concerned, Gopalganj in connection with Bishambharpur P.S. Case No. 149 of 2023, 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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