

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.78938 of 2023

Arising Out of PS. Case No.-343 Year-2023 Thana- MADHAURAH District- Saran

1. Pawan Mahto S/O Gorakh Mahto R/O Village- Bardahiya, Ps. Madhaura, Dist. Saran.
2. Agindev Mahto @ Agnidev Mahto S/O Gorakh Mahto R/O Village- Bardahiya, Ps. Madhaura, Dist. Saran.

... .. Petitioner/s

Versus

THE STATE OF BIHAR BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Tej Narayan Singh, Adv.

For the Opposite Party/s : Mr. Akshay Lal Pandit, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 04-01-2024 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 Marhowrah P.S. Case No. 343 of 2023 dated 13.06.2023 registered for the offences punishable u/s 30(a) of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, total 55 litres of illicit country made liquor was recovered inside the sand kept in the half constructed house of the petitioners. It is further alleged that the petitioners are engaged in illegal business of liquor.

5. Learned counsel for the petitioners has submitted that the petitioners have falsely been implicated in this case. The



petitioner no. 1 has one criminal antecedent whereas the petitioner no. 2 has no criminal antecedent as stated in para 3 of the bail petition. The name of the petitioners was disclosed by local *Chowkidar*. The recovery has been made from half constructed house which is an open place that is accessible to anyone. Learned counsel has further submitted that the petitioners have no concern with the alleged recovery and 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.

6. 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 nature of allegation against the petitioners, 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, Saran at Chapra in connection with Marhowrah P.S. Case No. 343 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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