

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.78632 of 2023

Arising Out of PS. Case No.-158 Year-2023 Thana- SAMASTIPUR District- Samastipur

1. RAJU KUMAR @ RAJU S/O POSHAN SAHANI R/O VILL- RUDAULI, P.S- SAMASTIPUR MUFFASIL, DISTT.- SAMASTIPUR.
2. SHATRUDHAN CHAUDHARY S/O LATE BALESHWAR CHAUDHARY R/O VILL- RUDAULI, P.S- SAMASTIPUR MUFFASIL, DISTT.- SAMASTIPUR.

... .. Petitioner/s

Versus

THE STATE OF BIHAR THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Bijay Bhushan Prasad, Adv.
For the Opposite Party/s : Mr.Ram Sumiran Rai, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 03-01-2024 Learned counsel for the petitioners is permitted to remove the defect(s), as pointed out by the office, if any, within a period of three weeks from today.

2. Heard learned counsel for the petitioners and learned Additional Public Prosecutor for the State.

3. The petitioners are apprehending their arrest in a case in connection with Samastipur Town P.S. Case No. 158 of 2023 dated 23.06.2023 for the offence/s punishable u/s 30(a) of the Bihar Prohibition and Excise Act.

4. As per the prosecution case, total 4.320 litres of foreign liquor was recovered from the motorcycle.

5. Learned counsel for the petitioners has submitted that the petitioners have falsely been implicated in this case. Nothing has



been recovered from the conscious possession of the petitioners. The petitioners are neither the owner nor the driver of the said motorcycle. The petitioners have no concern with the alleged recovery. The apprehended co-accused Amit Kumar @ Chhotu disclosed the name of the petitioners. The petitioner no. 1 is also accused in one more criminal case whereas the petitioner no. 2 has clean antecedent 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.

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.

7. 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) each



with two sureties of the like amount each to the satisfaction of the learned court concerned, Samastipur in connection with Samastipur Town P.S. Case No. 158 of 2023, subject to conditions as laid down under section 438(2) of the Code of Criminal Procedure.

8. The application stands allowed.

(Chandra Prakash Singh, J)

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