

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.2739 of 2024

Arising Out of PS. Case No.-364 Year-2023 Thana- MALSALAMI District- Patna

1. BABY DEVI WIFE OF BADRI MANJHI R/O MANSOORGANJ, MUSAHARI, P.S.- MALSALAMI, DIST.- PATNA
2. RINKAL DEVI WIFE OF TANKA MANJHI R/O MANSOORGANJ, MUSAHARI, P.S.- MALSALAMI, DIST.- PATNA

... .. Petitioner/s

Versus

THE STATE OF BIHAR PATNA

... .. Opposite Party/s

Appearance :

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

For the Opposite Party/s : Mr. Gauri Shankar Gupta, APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 02-02-2024 Heard learned counsel for the petitioners and learned Additional Public Prosecutor for the State.

2. The Petitioners are apprehending their arrest in connection with Malsalami P.S. Case No. 364 of 2023 dated 25.05.2023 for the offences punishable u/s 30(a), 36 of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, total 240 of illicit country made liquor was recovered from the back of the lavatory which belonged to the petitioners.

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



para 3 of the bail petition. The name of the petitioners was disclosed by villagers. The said recovery has been made from an open place which is accessible to anyone. No incriminating article 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.

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 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 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, Patna City in connection with Malsalami P.S. Case No. 364 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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