

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.449 of 2024

Arising Out of PS. Case No.-747 Year-2023 Thana- MASAUDHI District- Patna

1. Naushal Kumar @ Naushal Yadav Son Of Late Ajay Prasad @ Late Ajab Prasad Yadav Resident Of Village- Ganga Chak Malikana, Ps- Masaurhi, Distt- Patna
2. Nitish Kumar Son Of Sri Brij Lal Kumar Resident Of Village- Shivanand Chak, Ps- Bhagwanganj, Distt- Patna

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Anuj Kumar
For the Opposite Party/s : Mr.Sucheta Yadav

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 31-01-2024 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 connection with Masaurhi P.S. Case No. 747 of 2023 dated 20.10.2023 registered for the offences punishable u/s 30(a) of the Bihar Prohibition and Excise Act.

4. As per the prosecution case, total 91.5 litres of illicit liquor was recovered from the *bathan* of the petitioners.

5. Learned counsel for the petitioners has submitted



that the petitioners have falsely been implicated in this case. The petitioner no. 1 is accused in three other criminal cases and the petitioner no. 2 is accused in one more criminal case as stated in para 3 of the bail petition. No incriminating article has been recovered from the conscious possession of the petitioners, hence no case is made out. The recovery is made from an open place which is accessible to anyone. 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.

7. Considering the aforesaid facts and circumstances of the case as well as the nature of allegation against the 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 learned Court concerned, Patna in connection with Masaurhi P.S. Case No. 747 of 2023, subject to conditions as laid down under Section 438(2) of the Code of Criminal Procedure.

8. This application stands allowed.

(Chandra Prakash Singh, J)

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