

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.89885 of 2024**

Arising Out of PS. Case No.-138 Year-2022 Thana- MOTIHARI MUFASIL District- East Champaran

1. Sarath Mukhiya @ Swarath Mukhiya S/o Moti Mukhiya R/o Village- Hasuwaha, P.S.- Muffasil Motihari, Distt.- East Champaran.
2. Rajmati Devi W/o Sarath Mukhiya @ Swarath Mukhiya R/o Village- Hasuwaha, P.S.- Muffasil Motihari, Distt.- East Champaran.
3. Ful Kumari Devi W/o Manoj Mukhiya R/o Village- Hasuwaha, P.S.- Muffasil Motihari, Distt.- East Champaran.

... ... Petitioner/s

Versus

The State of Bihar

... ... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Alka Singh, Advocate,
For the Opposite Party/s : Mr. Md. Nazir Ansari, A.P.P.

CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH

ORAL ORDER

2 28-02-2025 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 Muffasil (Motihari) P.S. Case No. 138 of 2022, dated 27.02.2022, registered for the offences punishable under Sections 30(a), 32 and 41(1) of the Bihar Prohibition and Excise Act.

3. As per the prosecution case, total 1000 litres of illicit semi-prepared liquor has been recovered from the bank of Hasuwaha Sikrahana River.

4. Learned counsel for the petitioners has submitted



that the petitioners are innocent and have falsely been implicated in this case. The petitioner no. 1 having three criminal antecedents, the petitioner no. 2 having one criminal antecedent while petitioner no. 3 has got no criminal antecedent as stated in para 3 of the bail petition. Nothing has been recovered from the conscious possession of the petitioners hence, 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 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. It is further submitted that the recovery was made from an open place which is accessible to anyone.

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) each with two sureties of the like amount each to the satisfaction of learned court concerned, East Champaran at Motihari in connection with Muffasil (Motihari) P.S. Case No. 138 of 2022 subject to conditions as laid down under Section 438(2) of the Code of Criminal Procedure, with further condition:-

(i). The petitioner no. 1 is directed to remain physically present before the learned Court below on each and every date, failing which on two consecutive dates without reasonable cause, the bail bond of the petitioner is liable to be cancelled. .

7. This application stands allowed.

(Chandra Prakash Singh, J)

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