

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.69929 of 2019

Arising Out of PS. Case No.-108 Year-2019 Thana- GOVERNMENT OFFICIAL COMP.
District- Sitamarhi

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1. UPENDRA MUKHIYA Son of Bhadai Mukhiya,
 2. Shambhu Mukhiya Son of Ram Shresth Mukhiya
Both Resident of Village-Hari Chapra, Police Station-Dumra, District-Sitamarhi.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Ashok Kumar Jha, Advocate

For the Opposite Party/s : Mr. S.D. Yadav, AAG-IX

CORAM: HONOURABLE THE CHIEF JUSTICE

ORAL ORDER

2 27-11-2019 Instant petition under Sections 439 and 440 of Criminal Procedure Code has been moved for grant of bail in G.O. Case No. 108 of 2019 registered under Section 30A of the Bihar Prohibition & Excise Act, 2016.

I have heard learned counsel for the petitioners and learned Additional Public Prosecutor for the State. I have also perused the relevant record of the case, necessary for adjudication of this petition.

Allegedly, 62 litres of illicit liquor was recovered at Indo-Nepal Border near Bhitha More, which fact is seriously disputed by the petitioners. Prima facie also it appears that thus far no case against the petitioners is made out indicating their



complicity in the alleged crime. Recovery is from an area accessible to general public. Planting of the substance has not been ruled out by the prosecution.

Prima facie, nothing is produced to highlight petitioners' direct involvement in the crime.

It is submitted by learned counsel for the petitioners that the petitioners have roots in the society; are not likely to interfere in the investigation or influence any of the witnesses or destroy the evidence; are behind bars since 09.09.2018 and no further recovery is to be made from the petitioners nor any custodial interrogation is required.

Keeping in view the provision of the special enactment i.e. Bihar Prohibition and Excise Act, 2016, this Court is of the considered view that petitioners have made out a case for grant of bail. Possibility of false implication as is so alleged by the petitioners cannot be ruled out. Also, thus far save and except for naming the petitioners in the F.I.R., no evidence corroborative in nature stands recorded by the police. Also, none has come forward to highlight the possible involvement of the petitioners in the crime. On what basis the Investigating Officer could link the accused to the crime is also not emanating from the record.



Be that as it may, having regard to the entirety of the facts and circumstances of the case, let the petitioners, named above, be released on bail on furnishing bail bond of Rs. 25,000/- (Twenty five thousand) with two sureties of like amount each to the satisfaction of learned Additional District Judge II-cum-Special Judge, Excise Act, Sitamarhi in connection with G.O. Case No. 108 of 2019, on the following conditions:-

(i) That one of the bailors of the petitioners shall be their close relative.

(ii) That the petitioners shall not indulge in any similar offence till conclusion of the trial.

(iii) That the petitioners shall remain physically present in court on each and every date during trial and in the event of failure on two consecutive dates without sufficient reason, their bail bonds shall be liable to be cancelled by the learned court concerned.

(iv) The petitioners shall cooperate with the investigation, if not already concluded, and make themselves available as and when so required and in case of failure, the State shall be at liberty to move for cancellation of bail.

Any observation made herein shall not be construed to be an expression on the merits of the matter.



Petition stands disposed of in the above terms.

(Sanjay Karol, CJ)

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