

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.26996 of 2020

Arising Out of PS. Case No.-125 Year-2020 Thana- MASHRAK District- Saran

1. TUNTUN SAH S/o Late Deep Lal Sah Resident of Village-Rajapatti Gola, P.S.-Mashrakh, District-Saran.
2. Mintu Kumar @ Tarkeshwar Sah S/o Om Prakash Sah Resident of Village-Rajapatti Gola, P.S.-Mashrakh, District-Saran.

... .. Petitioners

Versus

THE STATE OF BIHAR

... .. Opposite Party

Appearance :

For the Petitioner/s : Mr.Mukesh Kumar Singh, Advocate
For the Opposite Party/s : Mr.Anand Mohan Prasad Mehta, APP.

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

2 06-11-2020 . As of now the Courts have not resumed normal physical hearing, the matter has been listed today for consideration through Video Conferencing.

The learned counsels are appearing and making submissions from their residence. The Court Master and Secretary are also part of this virtual court proceedings from their homes, all with the aid of audio visual technology.

Heard learned Counsel for the petitioners and the learned Counsel for the State.

Mr. Anand Mohan Prasad Mehta, APP is appearing for the State as it is submitted that the brief has been allotted to him by the office of Advocate General.

This Court would expect that the petitioner's Counsel would honour his undertaking in the instant proceedings regarding supply of requisite court fee etc. within two weeks from the date he is called upon to do so by the office.

Petitioners apprehend arrest in Mashrak PS Case No. 125



of 2020 registered under Sections 147, 148, 149, 341, 323, 353, 272, 505, 506 of the IPC and Sections 30, 30(1), 38, 41, 45 30(a) of Bihar Prohibition and Excise Act, 2016.

The allegation in the FIR is that from the shop of Dashrath Sah, his son-in-law namely Prem Sah was dealing in liquor. Co-accused Dashrath Sah has been taken into custody. Against the petitioners, there is allegation that they along with other persons have tried to free the arrested Dashrath Sah.

It is submitted by learned Counsel for the petitioners that even as per allegations made in the FIR petitioners name has been stated in the later part in reference to the allegation of trying to free the arrested Dashrath Sah. It is co-accused Dashrath Sah and his son who are alleged to have been dealing in liquor. The allegation of causing injury to the police party is also false and even during the course o investigation not a single injury has been found upon any police personnel. The fact of the matter is that against the police excess the local people were raising their voice and as such the petitioners and other co-accused persons who are having no criminal antecedent have been implicated in this case.

The prosecution allegation itself does not make out any allegation under the Bihar Prohibition and Excise Act.

In view of the facts and circumstances above no case whatsoever would be made out under the provisions of Bihar Prohibition and Excise Act.

Learned APP has opposed the prayer for pre-arrest bail on the ground of the same being not maintainable in view of the statutory bar on pre-arrest bail under the Bihar Prohibition and Excise Act. .

Considering the submissions and the facts, this Court, in view of the parameters for considering pre-arrest bail laid down in the case of ***Ram Vinay Yadav vs. State of Bihar reported in 2019 PLJR (2) 1089 (FB)***, is inclined to accept the submission made by



the petitioner's counsel for the limited purpose of grant of pre-arrest bail. The petitioner's prayer for anticipatory bail is allowed.

Accordingly, let the petitioners above named, in the event of arrest or surrender before the court below within four weeks from today, be released on bail on furnishing bail bonds of Rs. 10,000/- (Ten thousand) with two sureties of the like amount each to the satisfaction of 2nd Additional Sessions Judge -cum- Special Judge, Excise, Saran in Mashrakh PS Case No. 125 of 2020. subject to all conditions as laid down in Section 438(2) of the Criminal Procedure Code as also the following conditions:-

(i) That one of the bailors will be a close relative of the petitioner who will give an affidavit giving genealogy as to how he is related with the petitioner. The bailor will also undertake to inform the Court if there is any change in the address of the petitioner.

(ii) That the petitioner will be well represented on each date and if he fails to do so on two consecutive dates, his bail bond will be liable to be cancelled.

SNkumar/-

(Madhuresh Prasad, J)

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