

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No 27477 of 2020**

Arising Out of PS. Case No.-77 Year-2020 Thana- WARISLIGANJ District- Nawada

1. RAMBILASH SINGH S/o Chandar Singh Resident of Village-Maphi, P.S.- Warisaliganj, District-Nawada.
2. Praduman Singh S/o Rambilash Singh Resident of Village-Maphi, P.S.- Warisaliganj, District-Nawada.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr Devendra Prasad Singh, Advocate

For the Opposite Party/s : Mr Nand Kishore Prasad, APP

CORAM: HONOURABLE MR JUSTICE MADHURESH PRASAD

ORAL ORDER

2 03-12-2020 As of now, the Courts have not resumed normal physical hearing. The matter has been listed today for consideration through Video Conferencing.

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

Heard learned counsel for the petitioners.

Mr Nand Kishore Prasad, APP is appearing as it is submitted that the brief has been allotted to him by the office of Advocate General.

Petitioners apprehend their arrest in connection with



Warisaliganj Police Station (for brevity, *PS*) Case No 77 of 2020 instituted for the offence punishable under Section 30 (a) of Bihar Prohibition and Excise Act.

Having no criminal antecedent, it is submitted that the petitioners apprehend their arrest for alleged recovery of 279 liters of wine allegedly recovered from an under construction house.

Learned counsel for the petitioners submits that the petitioners' implication is only based on alleged statement of villagers. The under construction house is a joint family property. The petitioners have a share in the same and the recovery is from a half constructed house having access to various other persons for which the petitioners cannot be held liable, by any stretch of imagination. There is no compliance with Section 100 of Criminal Procedure Code nor is there any forensic opinion to sustain the allegation that the recovered substance is an intoxicant. The circumstances are such that no case under the Bihar Prohibition and Excise Act is made out against the petitioners.

Learned APP for the State has opposed the prayer for anticipatory bail, referring to the provisions of Section 76 (2) of the Bihar Prohibition and Excise Act and submitted that pre-



arrest bail would not be maintainable.

This Court is conscious of decision of the Full Bench in the case of Ram Vinay Yadav -Versus- State of Bihar reported in 2019 (2) PLJR 1089. Having regard to the law laid down in the said judgment and the submissions advanced on behalf of the petitioner, this Court, for the limited purpose of grant of anticipatory bail, is inclined to accept the submissions of learned counsel for the petitioner.

In the facts and circumstances of the case, prayer of petitioners for grant of anticipatory bail is allowed. In the event of surrender/arrest of the petitioners, named above, before the Court below, within four (04) weeks from today, they shall be released on bail on each of them furnishing bonds of Rs 10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of Additional Sessions Judge II -cum- Special Judge, Nawada in Warisaliganj PS Case No 77 of 2020 subject to the conditions as laid down under Section 438 (2) of Criminal Procedure Code and also the following conditions:-

(i) That one of the bailors will be a close relative of the petitioners who will give an affidavit giving genealogy as to how he is related with the petitioners. The bailor will also



undertake to inform the Court if there is any change in the address of the petitioners.

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

Learned counsel for the petitioners is expected to honour his undertaking given in the instant proceedings today for depositing requisite Court fee and removing the defect (s), as pointed out, when called upon to do so.

(Madhuresh Prasad, J)

M.E.H./-

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