

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.28715 of 2020

Arising Out of PS. Case No.-138 Year-2020 Thana- DUMRAO District- Buxar

-
1. Prabhunath Choudhary, S/o Lalan Chaudhary, Resident of Village-Noniyadera, P.S.-Dumraon, District-Buxar.
 2. Gudiya Devi, W/o Prabhunath Choudhary, Resident of Village-Noniyadera, P.S.-Dumraon, District-Buxar.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Dr. Kamal Deo Sharma, Advocate

For the Opposite Party/s : Smt. Meena Singh, APP

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

3 22-12-2020 Since 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 APP for the State.

The petitioners are apprehending their arrest in connection with Dumraon P.S. Case No.138 of 2020 for the offence punishable under Section 30(a) of the Bihar Prohibition



and Excise (Amendment) Act, 2018.

30 litres *Mahua* is alleged to have been recovered from the petitioners' house.

Petitioners' counsel submits that the petitioners are husband and wife. They are poor labourers working in Punjab. Recovery is within the State of Bihar and the alleged recovery is in contravention of the mandatory procedure of search and seizure prescribed under the Cr.P.C. The allegation is not supported by any forensic opinion to even suggest that the recovered substance is an intoxicant liquor. The facts and circumstances of the case do not make out a case under the Bihar Prohibition & Excise Act. The petitioners have no criminal antecedents.

Learned APP for the State 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 Section 76(2) of the Bihar Prohibition and Excise Act.

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



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

Accordingly, let the petitioners, above named, in the event of their arrest or surrender before the court below within a period of four weeks from today, be released on bail on furnishing bail bonds of Rs.10,000/- (Ten thousand) each with two sureties of the like amount each to the satisfaction of the learned A.D.J.-II Cum Special Judge, Excise Act, Buxar, in connection Dumraon P.S. Case No.138 of 2020, subject to the conditions as laid down in Section 438(2) of the Code of Criminal Procedure as also subject to the following conditions:

(i) That one of the bailors of each of the petitioners will be a close relative of the petitioners who will give an affidavit giving genealogy as to how he is related with the petitioners concerned. The bailors 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 fail to do so on two consecutive dates, their bail bonds will be liable to be cancelled.

This Court would expect that the petitioners' counsel would honour his undertaking in the instant proceedings



regarding supply of the requisite court fee etc. within two weeks
from the date he is called upon to do so by the office.

(Madhuresh Prasad, J)

PNM

U		T	
---	--	---	--

