

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.28713 of 2020

Arising Out of PS. Case No.-113 Year-2020 Thana- MAHARAJGANJ District- Siwan

1. Baleshwar Bin @ Baleshwar Prasad, Son of Sheoji Bin, Resident of Village- Patedha, Korwa Tola, P.S.- Maharajganj, District- Siwan
2. Nageshwar Bin @ Nageshwar Prasad, Son of Sheoji Bin, Resident of Village- Patedha, Korwa Tola, P.S.- Maharajganj, District- Siwan.
3. Rajesh Bin @ Rajesh Prasad, Son of Sheoji Bin, Resident of Village- Patedha, Korwa Tola, P.S.- Maharajganj, District- Siwan.
4. Yugeshwar Bin, Son of Sheoji Bin, Resident of Village- Patedha, Korwa Tola, P.S.- Maharajganj, District- Siwan.
5. Bharat Bin, Son of Dashrath Bin, Resident of Village- Patedha, Korwa Tola, P.S.- Maharajganj, District- Siwan.
6. Parmeshwar Bin, Son of Dashrath Bin, Resident of Village- Patedha, Korwa Tola, P.S.- Maharajganj, District- Siwan.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Mithilesh Kumar, Advocate
For the Opposite Party/s : Mr.Asha Kumari, 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 Maharajganj P.S. Case No.113 of 2020 for the offence punishable under Sections 272, 273 of the Indian Penal Code and Section 30(A), 36 and 41(b) of the Bihar Prohibition and Excise Act.

The prosecution case is that acting on a tip-off regarding manufacturing and selling of illicit liquor, the police party has gone to village-Itahari. On seeing the police party, the gathered people started fleeing away. One woman (Meena Devi) was apprehended, who has disclosed the names of the petitioners and one Lal Babu Bin, who were jointly manufacturing and selling the country-made wine. 10 litres country-made wine was recovered from a gallon thrown by co-accused Meena Devi.

Petitioners' counsel submits that the petitioners are agricultural workers. Being poor persons, they have been working in the field in the village. There is no recovery of any apparatus for manufacturing liquor nor is there any recovery attributed to the petitioners. The statement of the co-accused, having no evidentiary value, has been made the basis of the petitioners' implication, though there is no ingredient for the



offence under the Bihar Prohibition & Excise Act made out on the basis of the allegations made out in the F.I.R. 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.-Cum-Special Judge, Excise, Siwan, in connection Maharajganj P.S. Case No.113 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)

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