

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.30070 of 2020

Arising Out of PS. Case No.-207 Year-2019 Thana- HAJIPUR SADAR District- Vaishali

1. ASHOK KUMAR S/o Ganga Prasad Resident of Chhittar Bigha, P.S.-Karai-Pasurai, District-Nalanda (Bihar).
2. Dipak Kumar S/o Ashok Kumar Resident of Chhittar Bigha, P.S.-Karai-Pasurai, District- Nalanda (Bihar).

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Sujit Kumar, Adv
For the State : Ms. Pushpa Sinha APP

CORAM: HONOURABLE MR. JUSTICE MADHURESH PRASAD
ORAL ORDER

3 11-01-2021 Heard learned counsel for the petitioners and learned APP for the State.

Petitioners apprehend their arrest in connection with Hajipur PS Case No 207 of 2019 instituted for the offence under Section 30 (a) of the Bihar Prohibition and Excise Act, 2016.

It is alleged that on a tip off the police reached the *litchi* orchard. On seeing the police personnel ,3-4 persons have started fleeing from a parked vehicle. The police have recovered 70.740 litres of Indian Made Foreign Liquor from the vehicle in-question.

It is submitted by the petitioners' counsel that even as per the prosecution case, the recovery is from the vehicle standing in the name of wife of petitioner No.1, who has already been arrested and subsequently allowed bail. The petitioners' name has been added merely on suspicion, though the vehicle was being used by other person as it is impossible to even presume



that the petitioners would be carrying more than 70 litres of liquor for trade in their own vehicle registered in the name of the member of the family. Even as per the prosecution case, there is no recovery from the petitioners and they have no criminal antecedents. The implication based on such suspicion without having any allegation even in the prosecution case to constitute the offence under the Bihar Prohibition and Excise Act, is unreasonable and unsustainable as no case would be made out under the Bihar Prohibition and Excise Act.

The learned APP for the State has opposed the prayer for anticipatory bail, referring to the provisions contained in 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 vs. 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 petitioners, this Court, for the limited purpose of grant of anticipatory bail, is inclined to accept the submissions of counsel for the petitioners.

In the facts and circumstances of the case, prayer of the 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 anticipatory bail on furnishing bail bond of Rs. 10,000/- (ten thousand) each with two sureties of the like amount each to the satisfaction of the Additional District Judge-II-cum- Spl. Court, Excise Act, Hajipur, Vaishali, in connection with Hajipur Sadar P.S. Case No 207 of 2019, subject to the conditions as laid down under Section 438(2) Cr. P.C. subject to



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 fail to do so on two consecutive dates, their bail bond will be liable to be cancelled.

(Madhuresh Prasad, J)

shyambihari/-

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

