

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.47321 of 2022

Arising Out of PS. Case No.-87 Year-2022 Thana- NOWKOTHI GARHPURA District-
Begusarai

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1. Shiwam Kumar Son Of Ramshish Singh @ Musahru
 2. Ganesh Singh Son Of Jay Jay Narayan Singh @ But Khalifa
Both R/O Village- Maheshwara Ward No. 8 and 6, P.S.- Nawkothi, Distt.-
Begusarai

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Randhir Kumar No.1, Advocate

For the Opposite Party/s : Mr.Rajesh Kumar, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 18-11-2022 Learned counsel for the petitioners is permitted to

remove the defect (s), as pointed out by the office, if any,

within a period of four weeks from today.

Heard learned counsel for the petitioners and

learned Additional Public Prosecutor for the State in virtual

Court proceeding.

The petitioners are apprehending their arrest in a

case registered for the offences punishable under Sections

188,290,414,120(B) of IPC and Section 30(a) of Bihar

Prohibition and Excise Act.

Recovery is of 533.52 liters of foreign liquor.

Learned counsel for the petitioners submits that



petitioners have clean antecedent. They have falsely been implicated in the present case on the basis of the disclosure made by co-accused, namely, Krishna Chandra Mishra @ Raja Mishra. Further submits that the recovery has been made from the house of co-accused, namely, Gopal Chaudhary and not from petitioners' possession. Therefore, the recovery cannot be attributed to the petitioners. There is non-compliance with mandatory procedure prescribed for recovery under Section 100 of Cr.P.C. No case, whatsoever, would be made out against the petitioners under the Bihar Prohibition and Excise Act.

Learned A.P.P. for the State has vehemently opposed the prayer for bail of the petitioners referring the provision contained in Section 76(2) of the Bihar Prohibition and Excise Act and submitted that the pre-arrest bail would not be maintainable.

This Court is aware of the 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 aforesaid judgment and the submission advanced on behalf of the parties, this Court for the limited purpose of grant of anticipatory bail, is inclined to accept the



submission of Counsel for the petitioners.

Considering the aforesaid facts, nothing has been recovered from conscious possession of the petitioners, let the petitioners, above named, in the event of their arrest or surrender before the court below within a period of thirty days from the date of receipt of the order, be released on bail on furnishing bail bond of Rs.10,000 (Ten Thousand) each with two sureties of the like amount each to the satisfaction of learned court below where the case is pending in connection with Nawkothe P.S. Case No. 87 of 2022, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure and with other following conditions:-

(1) Petitioners shall co-operate in the trial and shall be properly represented on each and every date fixed by the Court and shall remain physically present as directed by the Court and on their absence on two consecutive dates without sufficient reason, their bail bonds shall be cancelled by the Court below.

(2) If the petitioners tamper with the evidence or the witnesses, in that case, the prosecution will be at liberty to move for cancellation of bail.

And, further condition that the court below shall



verify the criminal antecedent of the petitioners and in case at any stage, it is found that the petitioners have concealed their criminal antecedents, the court below shall take step for cancellation of bail bond of the petitioners. However, the acceptance of bail bonds in terms of the above-mentioned order shall not be delayed for purpose of or in the name of verification.

(Rajesh Kumar Verma, J)

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