

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.51293 of 2022

Arising Out of PS. Case No.-15 Year-2022 Thana- MUZAFFARPUR TOWN District-
Muzaffarpur

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1. Ganesh Choudhary Son of Late Bhudeni Choudhary @ Late Fudeni Choudhary Resident of Mohalla - Lakridhahi Chandwara Near Durga Mandir, P.S.- Town, O.P.- Sikandarpur, District - Muzaffarpur.
 2. Bajrang Kumar @ Bajrangi Choudhary Son of Late Fudeni Choudhary Resident of Mohalla - Lakridhahi Chandwara Near Durga Mandir, P.S.- Town, O.P.- Sikandarpur, District - Muzaffarpur.
 3. Golu Kumar @ Golu Choudhary Son of Late Fudeni Choudhary Resident of Mohalla - Lakridhahi Chandwara Near Durga Mandir, P.S.- Town, O.P.- Sikandarpur, District - Muzaffarpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Sheo Kumar Prasad, Advocate
For the Opposite Party/s : Mr. Dashrath Mehta, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

4 07-12-2022 Heard learned counsel for the petitioners and learned
Additional Public Prosecutor for the State.

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.

The petitioners are apprehending their arrest in a case
registered for the offences punishable under Sections 272, 273,
34 of the Indian Penal Code and Sections 30(a) (c), 34 of the
Excise Act.

Recovery is of 60 liters of country made liquor.



Learned counsel for the petitioners submits that the petitioners are innocent and have falsely been implicated in the present case. He further submits that the recovery has been made from the joint house of the petitioners and not from petitioners' possession. He further submits that they have no concern at all with the alleged recovery of the illicit liquor. 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.

The learned Additional Public Prosecutor has vehemently opposed the prayer for anticipatory 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. He further submits that the petitioners carry one more case other than the present one.

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) P.L.J.R. 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 and they have no concern at all with the alleged recovery of the illicit liquor, 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 the learned Court below where the case is pending in connection with Town (Sikandarpur O.P.) PS. Case No. 15 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.

3. 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 antecedent, 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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