

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.52592 of 2022

Arising Out of PS. Case No.-374 Year-2022 Thana- MOHANIYA District- Kaimur (Bhabua)

1. Bikky Pal @ Vikky Pal S/o Rambrat Pal R/o Village- Karmahari Semariya, P.S.- Mohaniya, District- Kaimur
2. Anish Pal S/o Bholal Pal @ Angad Pal Resident of Village- Gauradih, P.S.- Ramgarh, District- Kaimur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Gautam Kumar Yadav, Advocate

For the Opposite Party/s : Mr. Shyam Bihari Singh, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 21-11-2022 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 Section 414 of the Indian Penal Code and Sections 30(a) and 41 of Bihar Prohibition and Amendment Excise Act.

Recovery is of 54 liters of country made liquor.

Learned counsel for the petitioners submits that the petitioners have clean antecedent and they have falsely been



implicated in the present case. He further submits that the name of the petitioners are transpired on the basis of the confessional statement of the co-accused, namely, Vinay Kumar Singh. He further submits that the recovery has been made from the motorcycle in question and not from possession of the petitioners. Therefore, the recovery cannot be attributed to the petitioners. He further submits that the petitioners are not the owner of the motorcycle. 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 petitioner 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.

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, 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 Mohaniya P.S. Case No. 374 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 bond shall be cancelled by the Court below.

2. If the petitioners tampers 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 his 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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