

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.53442 of 2022

Arising Out of PS. Case No.-474 Year-2022 Thana- AHIYAPUR District- Muzaffarpur

1. MANISH SAH Son of Lalji Sah R/V- Kukraha, P.S- Sikarpur, Dist- Bettiah (West Champaran)
2. Munilal Mahto Son of Ramchandra Mahto R/V- Kukraha, P.S- Sikarpur, Dist- Bettiah (West Champaran)

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Ratneshwar Prasad, Adv.

For the Opposite Party/s : Mr.Md. Nazir Ansari, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 21-11-2022 Heard learned counsel for the petitioners and the learned A.P.P. for the State.

The petitioners apprehend their arrest in a case registered for the offence under Sections 30(a), 32(ii)(iii) 36 and 41(1) of the Bihar Prohibition and Excise Act.

Recovery is of 1218.24 liters of foreign liquor.

Learned counsel appearing for the petitioners submits that the petitioners, who are of clean antecedent, are innocent and have falsely been implicated in this case. He further submits that the recovery has been made from the pick up van and, in fact, nothing has been recovered from the conscious possession of the petitioners. Neither the



petitioners happen to be the driver of the alleged pick up nor they are the owner of the vehicle in question. He further contends that name of the petitioners transpired in this case on the basis of confessional statement of the co-accused, Sahzad Miya. He further submits that the petitioners have no concern at all with the alleged recovery and the co-accused. Therefore, the alleged recovery cannot be attributed to the petitioner. He further submits that there is non-compliance with mandatory procedures prescribed for recovery under Section 100 of the Cr.P.C. No case, whatsoever alleged in the F.I.R., is made out against the petitioner under the Bihar Prohibition and Excise Act. Hence, the petitioner may be granted the privilege of anticipatory bail.

The learned A.P.P. for the State has vehemently opposed the prayer for grant of anticipatory bail to the petitioner and referring to the provision contained in Section 76(2) of the Bihar Prohibition and Excise Act, he submits that pre-arrest bail is not maintainable.

This Court is aware of the decision of the Full Bench rendered 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 facts and circumstances of the case and also the fact that nothing has been recovered from the conscious possession of the petitioners, let the, above named, petitioners in the event of arrest of surrender before the court below within a period of four weeks from the date of 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 Ahiyapur P.S. Case No. 474 of 2022, subject to the conditions laid down under Section 438(2) of the Cr.P.C. as also with the 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 canceled 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 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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