

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.54177 of 2022

Arising Out of PS. Case No.-262 Year-2021 Thana- SASARAM MUFFSIL District- Rohtas

1. Jitu Alias Sunil Kumar @ Sunil Kumar Gupta Son of Late Doma Sah Resident of Village - Amara Talab, Sheoganj, PO.- Karwandia, P.S.- Sasaram (M), Distt.- Rohtas (Bihar)-821305
2. Dinesh Kumar @ Kalu Kumar Son of Sri Rajkumar Sah Resident of Village - Amara Talab, Sheoganj, PO.- Karwandia, P.S.- Sasaram (M), Distt.- Rohtas (Bihar)-821305

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Krishna Mohan Murari, Advocate
For the Opposite Party/s : Mr. Akbar Ali, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

3 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 30(a) of Bihar Prohibition and the Excise Act, 2018.

Recovery is of 90 liters of country made liquor.

Learned counsel for the petitioners submits that the petitioners have clean antecedent and have falsely been implicated in the present case only on the basis of disclosure



made by the local chowkidar. He further submits that the recovery has been made from the house of co-accused and not from petitioner's possession. He further submits that they have no concern at all with the alleged recovery or the co-accused person. 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.

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 the name of the petitioner has been transpired only on the basis of disclosure made by local chowkidar and the petitioners have clean antecedents, 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 Sasaram (M) PS. Case No. 262 of 2021, 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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