

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.54249 of 2022

Arising Out of PS. Case No.-347 Year-2022 Thana- BHAGWAN BAZAR District- Saran

1. Dawarika Chaudhary Son of Late Narottam Chaudhary Resident of Village - Daulat Ganj, P.S.- Bhagwan Bazar, Distt.- Saran.
2. Bhikari @ Bhikhari Kumar @ Saroj Kumar @ Amit Son of Late Satyanarayn Shah Resident of Village - Buti More, P.S.- Bhagwan Bazar, Distt.- Saran.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ajit Kumar Singh, Advocate

For the Opposite Party/s : Ms. Veena Kumari Jaiswal, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 22-11-2022 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 30(a)
of Bihar Prohibition and Excise (Amendment) Act, 2018.

Recovery is of 350 liters of country made illicit
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 names of the petitioners have been transpired on the basis of the disclosure made by the co-accused person, namely, Hukum Kumar who is the driver of the vehicle in question. He further submits that the recovery has been made from vehicle in question and not from the possession of the petitioners. Therefore, the recovery cannot be attributed to the petitioners. He further submits that the co-accused person, namely, Ramesh Ray @ Ramesh Kumar Ray has been granted bail vide order dated 21.11.2022 passed in Cr. Misc. No. 51037 of 2022 and the case of the petitioner is on similar footing. 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, 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) with two sureties of the like amount each to the satisfaction of the learned Court below where the case is pending in connection with Bhagwan Bajar P.S. Case No. 347 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, his 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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