

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.59196 of 2022

Arising Out of PS. Case No.-224 Year-2021 Thana- GAIGHAT District- Muzaffarpur

1. RAKESH KUMAR MANDAL Son of Shatrudhan Mandal Resident of Village - Fajala Udapur, P.S.- Siwaipatti, Distt.- Darbhanga.
2. Fool Kumar Mandal @ Phool Mandal @ Fook Kumar Mandal Son of Sri Narayan Mandal @ Narayan Mandal Resident of Village - Bhagnovi, Chalda, P.O.- Chakla, P.S.- Baheri, Distt.- Darbhanga.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Yugal Kishore, Advocate

For the Opposite Party/s : Mr.Tarkeshwar Nath Thakur, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

3 28-11-2022 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.

Heard learned counsel for the petitioners and learned Additional Public Prosecutor for the State.

The petitioners are apprehending their arrest in a case registered for the offences punishable under Sections 272,273,34 of IPC and Sections 30(a),36,41(1) of Bihar Prohibition and Excise Act, 2018.

Recovery is of 3052.800 liters of foreign liquor.

Learned counsel for the petitioners submits that petitioners have clean antecedent. They have falsely been



implicated in the present case. Further submits that the petitioners are not named in the FIR. The name of the petitioners have been transpired on the basis that the petitioners talked with co-accused Kuldeep Sharma and on the basis of the same the name of the petitioners have falsely been implicated in the present case. Further submits that the recovery has been made from the Truck in question and not from petitioners' possession. Further submits that the petitioner is neither the driver nor the owner of the Truck in question. 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.

Learned A.P.P. for the State has vehemently opposed the prayer for 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) 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 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 learned court below where the case is pending in connection with Gaighat P.S. Case No. 224 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.

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 antecedents, 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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