

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.55818 of 2022

Arising Out of PS. Case No.-178 Year-2022 Thana- MADANPUR District- Aurangabad

1. ASHUTOSH KUMAR @ GUDDU YADAV @ GUDDU S/O SRI JEETENDRA SINGH Resident of village- Jamunee, P.S.- Obra and District- Aurangabad.
2. DEEPU YADAV S/O AVADHESH SINGH Resident of village- Jamunee, P.S.- Obra and District- Aurangabad.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Vyas Kumar Mishra, Adv.

For the Opposite Party/s : Mr. Sanjay Kumar Pandey, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 25-11-2022 Heard learned counsel for the petitioners and the learned A.P.P. for the State through video conferencing.

The petitioners apprehend their arrest in a case registered for the offence under Section 30(a) of the Bihar Prohibition and Excise Act.

Recovery is of 256.2 liters of country made liquor.

Learned counsel appearing for the petitioner 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 maruti in question and, in fact, nothing has been recovered from the conscious possession of the petitioners but the



name of these petitioners have transpired in this case on the basis of disclosure made by the co-accused, Mithilesh Kumar Yadav. He further submits that the petitioners have no concern at all with the alleged recovery and the vehicle in question and also the co-accused. Therefore, the alleged recovery cannot be attributed to the petitioners. 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 petitioners under the Bihar Prohibition and Excise Act. Hence, the petitioners 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 petitioners 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 and the name of these petitioners have transpired in this case on the basis of disclosure made by the co-accused, Mithilesh Kumar Yadav, 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 Madanpur P.S. Case No. 178 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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