

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.57973 of 2022

Arising Out of PS. Case No.-480 Year-2022 Thana- SIWAN MUFFASIL District- Siwan

1. ROHIT KUMAR Son of Santosh Kumar @ Guddu Yadav R/V- Tandwa, P.S- Siwan Muffasil, Dist- Siwan
2. Uttam Kumar Son of Dinesh Yadav @ Bigu R/V- Tandwa, P.S- Siwan Muffasil, Dist- Siwan

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ajay Kumar Tiwary, Advocate

For the Opposite Party/s : Mr. Umeshanand Pandit, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 25-11-2022 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.

Learned counsel for the petitioners submits that the petitioner no. 1 has been arrested during the pendency of the anticipatory bail petition and as such, he seeks permission to withdraw the petition of petitioner no. 1 as having become infructuous.

Permission is accorded.

The petition of petitioner no. 1 is dismissed as



withdrawn as having become infructuous.

The petitioner no. 2 is apprehending his arrest in a case registered for the offences punishable under Sections 30(a) of Bihar Prohibition and Excise Act, 2016.

Recovery is of 270 litres of country made liquor.

Learned counsel for the petitioner no. 2 submits that the petitioner has clean antecedent and has falsely been implicated in the present case. He further submits that the recovery has been made from the bush and the motorcycle in question and not from petitioner's possession. He further submits that the name of the petitioner has been transpired only on the basis of disclosure made by local police and spy and the petitioner has no concern at all with the alleged recovery of illicit liquor or the motorcycle in question. Therefore, the recovery cannot be attributed to the petitioner. 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 petitioner no. 2 under the Bihar Prohibition and Excise Act.

The learned Additional Public Prosecutor has vehemently opposed the prayer for anticipatory bail of the petitioner no. 2 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 petitioner no. 2.

Considering the aforesaid facts, nothing has been recovered from conscious possession of the petitioner no. 2, let the petitioner no. 2, above named, in the event of his 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 Siwan Muffasil P.S. Case No. 480 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. Petitioner no. 2 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 his absence on two consecutive dates without sufficient reason, his bail bond shall be cancelled by the Court below.

2. If the petitioner no. 2 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 petitioner no. 2 and in case at any stage it is found that the petitioner no. 2 has concealed his criminal antecedent, the court below shall take step for cancellation of bail bond of the petitioner no. 2. 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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