

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.59193 of 2022

Arising Out of PS. Case No.-266 Year-2019 Thana- KATRA District- Muzaffarpur

1. BINDA DAS @ BIRENDRA KUMAR S/O SONELAL DAS @ SONO DAS.
2. ARJUN SAHNI @ ARJUN KUMAR S/O DINESH SAHNI.
Both Resident of village- Khamuri Dih @ Khangura Dih, Parti Tola
(Sitawar), P.S.- Katra District- Muzaffarpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Arvind Kumar, Advocate
For the Opposite Party/s : Mr.Bhanu Pratap Singh, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 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 of IPC and Sections 30(a) and 38(i) of Bihar Prohibition and Excise Amendment Act, 2016.

Recovery is of 172.800 liters of foreign liquor.

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



implicated in the present case. The name of the petitioners have been transpired on the basis of the disclosure made by the local Chaukidar and except the disclosure of the local Chaukidar no cogent material has come during investigation against the petitioners. Further submits that the recovery has been made from the field of Lal Babu Jha and not from petitioners' possession and the petitioners have no concern at all with the illicit liquor. 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 Katra P.S. Case No. 266 of 2019, 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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