

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.57679 of 2022

Arising Out of PS. Case No.-66 Year-2022 Thana- ARER District- Madhubani

1. Rajiv Kumar Sah @ Rajib Kumar Sah @ Rajiv Sah Son of Shravan Sah R/O Village- Arer Hat, Kamlawari, P.S.- Arer, District- Madhubani.
2. Santu Kumar @ Santu Kumar Sah Son of Shravan Sah R/O Village- Arer Hat, Kamlawari, P.S.- Arer, District- Madhubani.
3. Bholu Sah @ Bhalu @ Bhaulu Kumar Son of Shravan Sah R/O Village- Arer Hat, Kamlawari, P.S.- Arer, District- Madhubani.
4. Hira Devi Wife of Shravan Sah R/O Village- Arer Hat, Kamlawari, P.S.- Arer, District- Madhubani.
5. Rubi Devi Wife of Rajiv Kumar Sah @ Rajib Kumar Sah @ Rajiv Sah R/O Village- Arer Hat, Kamlawari, P.S.- Arer, District- Madhubani.
6. Tulsi Kumari D/O Shravan Sah R/O Village- Arer Hat, Kamlawari, P.S.- Arer, District- Madhubani.

... .. Petitioner/s

Versus

The State of Bihar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Bhavesh Kumar Sah, Advocate
For the Opposite Party/s : Mr. Shailendra Kumar, A.P.P.

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 in virtual court proceeding.

Let the defects, as pointed out by the office, be removed within a period of four weeks from today.

The petitioners apprehend their arrest in a case registered for the offences punishable under Section 272, 273, 34 of the Indian Penal Code and Section 30(a) of Bihar



Prohibition and Excise Act, 2016.

Recovery is of total 34.5 liters of Nepali country made liquor.

Learned counsel for the petitioners submits that petitioners have clean antecedent and they have falsely been implicated in the present case. He further submits that the recovery has been made from the joint house of the co-accused namely, Shravan Sah who is father of petitioner no.1 and not from petitioners possession. Therefore, the recovery cannot be attributed to the petitioners. He further submits that all the family members have been made accused in the present case on the basis of alleged recovery. He further submits that 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 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 or **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 and circumstances, petitioners have clean antecedent and nothing has been recovered from conscious possession of the petitioners, let the petitioners, above named, in the event of their arrest or surrender within a period of four weeks from the date of receipt of the order, be released on anticipatory bail on furnishing bail bond of Rs. 10,000/- (Ten Thousand) each with two sureties of the like amount each to the satisfaction of the learned Court below where the case is pending in connection with Arer P.S. Case No. 66 of 2022, G.R. No. 827 of 2022, subject to the conditions as laid down under Section 438(2) of the Cr.P.C. and also 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 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.

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 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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