

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.57637 of 2022

Arising Out of PS. Case No.-561 Year-2022 Thana- GOVERNMENT OFFICIAL COMP.
District- Muzaffarpur

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1. LALU SAHNI S/o Late Keshwar Sahni R/o vilage- Chhoti Kothiya, P.S.- Mushahari, District- Muzaffarpur
 2. Dheeraj Kumar @ Dheeraj Sahni S/o Late Narayan Sahni R/o vilage- Chhoti Kothiya, P.S.- Mushahari, District- Muzaffarpur

... .. Petitioner/s

Versus

The State of Bihar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Santosh Kumar, Advocate

For the Opposite Party/s : Mr. Pradeep Narain 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 30(a) of Bihar Prohibition and Excise Act, 2016.

Recovery is of total 40 liters of Desi Chulai 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 bank of Gandak River which is an open place and not from petitioners possession. Therefore, the recovery cannot be attributed to the petitioners. He further submits that the name of the petitioners have been transpired on the basis of disclosure made by the co-accused namely, Yogendra Sahni and except the disclosure made by co-accused nothing has come during investigation against the petitioners. 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 and name of the petitioners have been transpired on the basis of disclosure made by the co-accused namely, Yogendra Sahni, let the petitioners, above named, in the event of his 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 Excise P.S. Case No. 561 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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