

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.59554 of 2022

Arising Out of PS. Case No.-146 Year-2022 Thana- GOVERNMENT OFFICIAL COMP.
District- Samastipur

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1. NITISH KUMAR Son of Raju Chaudhary @ Rajo Choudhary
 2. DEEPAK KUMAR Son of Raju Chaudhary @ Rajo Choudhary
Both Resident of Village- Kanu, Bishanpur, P.S.- Khanpur, District-
Samastipur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Pramod Kumar Singh, Advocate

For the Opposite Party/s : Mr.Mritunjay Kumar Nirala, 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 30(a) (c)

of Bihar Prohibition and Excise (Amendment) Act, 2018.

Recovery is of 02 liters of country made 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 co-accused Ram Babu Choudhary. Further submits that the recovery has been made from the land of co-accused and not from petitioners' possession and the petitioners have no concern at all with the alleged recovery of illicit liquor or the motorcycle in question. 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 Excise P.S. Case No. 146 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) 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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