

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.63007 of 2022

Arising Out of PS. Case No.-248 Year-2022 Thana- WARISNAGAR District- Samastipur

1. Ashok Kumar Mahto @ Ashok Kumar S/O Raj Kumar Mahto Resident of village- Dhobopur Banmara, P.S.- Hayaghat, District- Samastipur
2. ANIL KUMAR MAHTO S/O RAJ KUMAR MAHTO Resident of village- Dhobopur Banmara, P.S.- Hayaghat, District- Samastipur
3. Pawan Kumar Choudhary S/O Mahendra Choudhary Resident of village- Dhobopur Banmara, P.S.- Hayaghat, 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, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 02-12-2022 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 Sections 30(a), 41(1)(2), 32(2)(3) of Bihar Prohibition and Excise (Amendment) Act, 2018.

Recovery is of total 1963.920 liters of Indian Made Foreign 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 vehicle in question 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 co-accused namely, Chandan Kumar Chaudhary and Munna Chaudhary and except the disclosure of co-accused no cogent material has come during investigation against the petitioners. He further submits that petitioners have no concern at all with the alleged recovery of liquor or the vehicle in question. 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 petitioners 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, nothing has been recovered from conscious possession of the petitioners and the name of the petitioners have been transpired on the basis of confessional statement of co-accused, 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 Warisnagar P.S. Case No. 248 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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