

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.60110 of 2022

Arising Out of PS. Case No.-78 Year-2022 Thana- CHHAURADANO District- East
Champaran

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1. SAMSUL MIAN Son of Ismail Mian R/v- Juafar, P.S.- Chhauradano,
District- East Champaran
 2. BHOLA SAH Son of Late Raju Sah R/v- Dhaphar, P.S.- Chhauradano,
District- East Champaran

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

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

For the Opposite Party/s : Mr. Asha Kumari, APP

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 the virtual court

proceeding.

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.

The petitioners are apprehending his arrest in a case
registered for the offences punishable under Sections 188, 272,
273, 420, 308 of the Indian Penal Code and 30(a), 32, 41(1) of
Bihar Prohibition and the Excise Act, 2018.

Recovery is of 570 liters of Nepali country made
illicit liquor.



Learned counsel for the petitioners submits that the petitioners have clean antecedent and have falsely been implicated in the present case. The name of the petitioners have been transpired on the basis of disclosure made by the local villagers. They further submit that the recovery has been made from cowshed of Prem Shankar Yadav and not from petitioners' conscious possession. 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.

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 of **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, 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) with two sureties of the like amount each to the satisfaction of the learned Court below where the case is pending in connection with Chhauradano P.S. Case No. 78 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 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 state 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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