

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.64910 of 2022

Arising Out of PS. Case No.-109 Year-2022 Thana- KHAJAU LI District- Madhubani

1. Madan Mahto Son of Late Sikandar Mahto R/o- Datuar, P.S.- khajauli, Dist-Madhubani
2. Raman Mahto Son of Matwar Mahto R/o- Datuar, P.S.- Khajauli, Dist-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. Mukesh Kumar Singh, 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 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 their arrest in a case registered for the offences punishable under Sections 272, 273, 414 and 34 of the Indian Penal Code and Section 30(a) of Bihar Prohibition and Excise Act.

Recovery is of 306 liters of liquor.

Learned counsel for the petitioners submits that the



petitioners have clean antecedent and they have falsely been implicated in the present case. He further submits that the name of the petitioners have been transpired on the basis of the confessional statement made by the co-accused, namely, Chandan Paswan. He further submits that the recovery has been made from different motorcycles and not from petitioners' possession. He further submits that the petitioners have no concern at all with the alleged recovery of the illicit liquor or the motorcycle in question. He further submits that except the confessional statement of the co-accused, no other cogent material has come during investigation against the petitioners. 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 petitioner under the Bihar Prohibition and Excise Act.

The learned Additional Public Prosecutor has vehemently opposed the prayer for anticipatory bail of the petitioner 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, and their name have been transpired on the basis of the confessional statement of the co-accused, namely, Chandan Paswan and the petitioners have clean antecedent, 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 the learned Court below where the case is pending in connection with Khajauli P.S. Case No. 109 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 tampers 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 his 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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