

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.65199 of 2022

Arising Out of PS. Case No.-382 Year-2020 Thana- MAIRWAN District- Siwan

1. Jishan Ali @ Jishu Ansari S/O Mustak Ahamad Resident of Village- Motichhapar, P.S.- Mairwa, District- Siwan.
2. Yogendra Singh @ Yogendra Singh Kushwaha S/O Raghubir Singh Kushwaha Resident of Village- Karjania, P.S.- Mairwa, District- Siwan.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

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

For the Opposite Party/s : Mr. Khurshid Anwar, 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 45, 37(B) and 37 (c) of Bihar Prohibition and Excise Act, 2016.

As per the prosecution story, the petitioners reached near police vehicle in drunken condition and forcibly took away the two apprehended persons.



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 it appears from the F.I.R. that no recovery has been made from anywhere and the allegation against the petitioners is that they are disturbing the duties of the police force. He further submits that the petitioners are not found in drunken condition and only on the basis of the suspicion, the police has filed the present false and fabricated case against 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 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 and they 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 Mairwa P.S. Case No. 382 of 2020, 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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