

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.67034 of 2022

Arising Out of PS. Case No.-487 Year-2022 Thana- HISUWA District- Nawada

1. Shankar Rajwanshi @ Shiv Shankar Rajwanshi Son Of Naresh Rajwanshi @ Naresh Ram Resident Of Village - Phulwariya, P.S.- Hisua, District - Nawada.
2. Dharmendra Kumar Son Of Baru Chaudhary Resident Of Village - Phulwariya, P.S.- Hisua, District - Nawada.

... .. Petitioner/s

Versus

The State of Bihar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Man Mohan Kumar, Advocate
For the Opposite Party/s : Mr. Sharda Kumari, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 09-12-2022 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 Section 30(a), 41 of Bihar Prohibition and the Excise Act, 2016.

Recovery is of 175 liters of 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. He further submits that the recovery has been made from bush in the front of Phulwariya's brick kiln and not from petitioners' conscious possession. He further submits that the name of the petitioners have transpired on the basis of the disclosure made by the local Chaukidar. He further submits that the petitioners have no concern at all with the alleged recovery of illicit liquor. 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, petitioners have clean antecedent and nothing has been recovered from conscious possession of the petitioners and the name of the petitioners have transpired on the basis of disclosure made by local Chaukidar, 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 Hisua P.S. Case No. 487 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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