

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.58313 of 2023

Arising Out of PS. Case No.-543 Year-2023 Thana- MAJHAULIA District- West Champaran

1. Sipahi Sahani S/O Bhikhari Sahni R/O Village- Senuariya Nauka Tola Ps. Majhauiliya, Dist. West Champaran
2. Mukesh Sah @ Mukesh Kumar Sah @ Mukesh Kumar S/O Vijay Sah R/O Village- Rulahi Vishambhara, Ps. Majhauiliya, Dist. West Champaran

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Anant Kumar Mishra, Advocate

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

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 07-10-2023 Heard Mr. Anant Kumar Mishra, learned counsel for the petitioners and Dr. Indihar Kumari, learned Additional Public Prosecutor for the State.

2. The petitioners are apprehending their arrest in connection with Majhauiliya P.S. Case No. 543 of 2023 F.I.R. dated 04.07.2023 registered for the offences punishable under Sections 30(A), 41 of Bihar Prohibition and Excise Act.

3. Recovery is of 173.400 litres of illicit liquor.

4. Learned counsel for the petitioners submits that the petitioner no. 1 has one criminal antecedent whereas petitioner no. 2 has clean antecedent and they have falsely been implicated in the present case on the basis of suspicion. He



further submits that from perusal of the F.I.R. as well as seizure list that nothing has been recovered from the conscious possession of the petitioner and neither the petitioners were arrested from the place of occurrence and petitioners are neither the owner nor the driver of the vehicle in question and the name of the petitioners have been transpired on the basis of disclosure made by local choukidar and except the aforesaid, no other cogent material has come during investigation to suggest the involvement of the petitioners in the present occurrence. 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.

5. 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.

6. 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 petitioner.

7. Considering the aforesaid facts, nothing has been recovered from conscious possession of the petitioner, 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 learned Exclusive Special Judge, Excise, Bettiah, West Champaran in connection with Majhauriya PS. Case No. 543 of 2023, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure and with other following conditions:-

1. Petitioner 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 bonds 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 antecedents, 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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