

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.59718 of 2023**

Arising Out of PS. Case No.-39 Year-2023 Thana- DUMARIAGHAT District-
East Champaran

- =====
1. LAL BABU SAHANI Son of Nagina Sahni Resident of village - Shemuwapur, P.S. - Dumariyaghat, Distt. - East Champaran
 2. Bayash Sahni Son of Nagina Sahni Resident of village - Shemuwapur, P.S. - Dumariyaghat, Distt. - East Champaran
 3. Wokil Sahni Son of Meghu Sahni Resident of village - Shemuwapur, P.S. - Dumariyaghat, Distt. - East Champaran
 4. Oshiyar Sahni Son of Meghu Sahni Resident of village - Shemuwapur, P.S. - Dumariyaghat, Distt. - East Champaran

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Md. Waliur Rahman

For the Opposite Party/s : Mr.Sanjay Kumar

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA

ORAL ORDER

2 07-10-2023 Heard Mr. Md. Waliur Rahman, learned counsel for

the petitioners and Mr. Sanjay Kumar, learned A.P.P. for the

State.

The petitioners apprehend their arrest in
connection with Dumariyaghat P.S. Case No. 39 of 2023
dated 07.02.2023 registered for the offence under Sections
30(a) of the Bihar Prohibition and Excise Act.

Recovery is of 85 liters of illicit country made
liquor.



Learned counsel appearing for the petitioners submits that the petitioners are innocent and have falsely been implicated in this case. He further submits that on bare perusal of the F.I.R. and the seizure list, it appears that nothing has been recovered from the conscious possession of the petitioners rather they are alleged to have thrown the gallon from which illicit liquor has been recovered and they have been identified by the local chaukidar while they were fleeing away after seeing the police. The petitioners have no concern at all with the alleged recovery. Save and except the disclosure of the chaukidar, no cogent material has surfaced during course of investigation suggesting the involvement of the petitioners in the alleged occurrence, therefore, no case would be made out against the petitioners under the Bihar Prohibition and Excise Act.

Learned A.P.P. for the State has vehemently opposed the prayer for grant of anticipatory bail to the petitioner referring to the provisions contained in Section 76(2) of the Bihar Prohibition and Excise Act and submits that this application seeking pre-arrest bail would not be maintainable. He further submits that the petitioner Nos. 3 carries one more case and petitioner No.4 carries two case



other than the present one whereas petitioner Nos. 1 and 2 bear clean antecedent.

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 facts and circumstances of the case and the fact that nothing incriminating has been recovered from the possession of the petitioners and they have been made accused in this case at the behest of local chaukidar, let the, above named, petitioners, in the event of their arrest or surrender before the court below within a period of four weeks, 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 Special Judge, Excise Court No.2, East Champaran, Motihari in connection with Dumariyagaht P.S. Case No. 39 of 2023, subject to the conditions laid down under Section 438(2) of the Cr.P.C. as also with the 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 canceled 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.

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 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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