

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.61367 of 2023

Arising Out of PS. Case No.-206 Year-2023 Thana- MAHARAJGANJ District- Siwan

1. Raj Kumar Mahto
 2. Dinesh Mahto
- Both are S/O Late Gopal Mahto R/O Village- Noniadih Purani Bazar, P.S-
Maharajganj, Distt.- Siwan.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Gajendra Kumar Singh, Advocate
For the Opposite Party/s : Mr.Anil Prasad Singh, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 12-10-2023 Heard Mr.Gajendra Kumar Singh, learned counsel for
the petitioners and Mr.Anil Prasad Singh, learned Additional
Public Prosecutor for the State.

2. The petitioners are apprehending their arrest in
connection with Maharajganj P.S.Case No.206 of 2023,FIR
dated 23.07.2023, registered for the offences punishable under
Sections 272,273 of IPC and Section 30(a) of Bihar Prohibition
and Excise Act, 2016.

3. Recovery is of 30 liters of country made liquor.

4. Learned counsel for the petitioners submits that
petitioners have falsely been implicated in the present case and
nothing has been recovered from their conscious possession



rather the recovery has been made from the Palani and the petitioners were not apprehended at the place of occurrence. 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.

5. Learned A.P.P. for the State has vehemently opposed the prayer for 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. Further submits that the petitioners carry one more case other than the present one of the similar nature but fairly submits that the petitioners are on bail in the said case.

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) PLJR 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.

7. Considering the aforesaid facts, nothing has been recovered from conscious possession of the petitioners, 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-1, Siwan in connection with Maharajganj P.S.Case No.206 of 2023, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure and with other following conditions:-

(I) 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 bonds shall be cancelled by the Court below.

(II) 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.

(III) 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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