

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.65395 of 2023

Arising Out of PS. Case No.-406 Year-2023 Thana- MOTIHARI MUFASIL District- East
Champaran

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1. Rajprakash Kumar @ Babua @ Rajprakash son of Krishna Mukhiya @
Krishna Mahato
 2. Deepak Kumar son of Shiv Shankar Mukhiya
 3. Satyaveer Kumar son of Dipa Mukhiya
 4. Bharat Kumar son of Sitaram Mukhiya
 5. Pradeep Kumar son of Motilal Mukhiya
All Village- Harkaina Ps- Mufasil Dist- East Champaran

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Abhishek Kumar, Advocate

For the Opposite Party/s : Mr. Sanjay Kumar Tiwary, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 01-11-2023 Heard learned counsel for the petitioners as well as
learned Additional Public Prosecutor for the State.

2. The petitioners are apprehending their arrest in connection with Muffasil P.S. Case No.406 of 2023, F.I.R. dated 04.06.2023 registered for the offence punishable under Sections 30(a)(c) 32, 41(i) of the Bihar Prohibition and Excise Act, 2016.

3. The prosecution case, in short, is that there has been recovery of 176 liters countrymade liquor, 5 gas cylinder and 4 gas 'Bhatti' from the 'Chewar'.

4. Learned counsel for the petitioners submit that petitioners have clean antecedent and have falsely been



implicated in the present case on the basis of the disclosure made by the local chowkidar. He further submits that from perusal of the FIR and seizure list that nothing has been recovered from the conscious possession of the petitioners, rather recovery had been made from the 'Chewar', which is open place. Further submits that petitioners have no concern at all with the alleged recovery of the illicit liquor or the other articles and except the disclosure made by the local Chowkidar, no other cogent material has come during investigation to suggest the involvement of the petitioner in the present 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. 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 petitioners.

7. Considering the aforesaid fact that petitioners have clean antecedent, nothing has been recovered from conscious possession, name of petitioners have transpires on the basis of disclosure made by local chowkidar, 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 anticipatory bail on furnishing bail bond of Rs.10,000/- (Rupees Ten Thousand) with two sureties of the like amount each to the satisfaction of learned Exclusive Special Excise Court No.1, Motihari, East Champaran in connection with Muffasil P.S. Case No.406 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 their anticipatory 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 anticipatory 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)

Prakash Narayan

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