

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.67037 of 2023

Arising Out of PS. Case No.-140 Year-2023 Thana- AKBARPUR District- Nawada

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1. DYANAND KUMAR @ DAYANAND YADAV S/O SANJAY PRASAD YADAV @ SANJAY YADAV R/O VILLAGE GANGATA, PO-BAHADUR, P.S.- RAJAULI DISTRICT NAWADA
 2. SANJAY YADAV S/O BASANT YADAV @ BASO YADAV R/O VILLAGE GANGATA, PO- BAHADUR, P.S.- RAJAULI DISTRICT NAWADA

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Sudhanshu Kumar, Advocate.
For the Opposite Party/s : Mr. Umeshanand Pandit, A.P.P.

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

3 03-11-2023 Heard Mr. Sudhanshu Kumar, learned counsel for the petitioners and Mr. Umeshanand Pandit, learned Additional Public Prosecutor for the State.

2. The petitioners are apprehending their arrest in connection with Akbarpur P.S. Case No. 140 of 2023 dated 4.3.2023 registered under Sections 30(a) and 30(c) of the Bihar Prohibition and Excise Act, 2016.

3. Recovery is of 75 litres of country made liquor. and 8400 litres of soaked java Mahua solution.

4. Learned counsel for the petitioners submits that the petitioners have falsely been implicated in the present case. From a bare perusal of the FIR as well as the seizure list it



appears that nothing incriminating have been recovered from conscious possession of the petitioners rather the recovery has been made from a ditch situated at the forest of Gharwa Kol. Learned counsel further submits that the allegation as alleged in the FIR is false and fabricated and the petitioners have not committed any offence as alleged in the First Information Report. The name of the petitioners have come on the basis of disclosure made by apprehended co-accused persons namely, Sonu Kumar and Shailendra Kumar. From perusal of the First Information Report, it appears that there is no recovery from conscious possession of the petitioners except the disclosure made by the co-accused persons involving in the offence. He next submits that the similarly situated co-accused namely, Guddu Yadav has been granted anticipatory bail by a co-ordinate Bench of this Court vide order dated 30.10.2023 passed in Cr. Misc. 45731 of 2023.

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. He further submits that the petitioners are named in the FIR and the apprehended co-accused have



disclosed the name of the petitioners. The petitioner No. 1 carries one case of similar nature which is anticipatory bail pending case and petitioner No. 2 has clean antecedent.

6. Considering the aforesaid fact, the fact that nothing has been recovered from conscious possession of the petitioners, the name of the petitioners have come on the basis of disclosure made by the co-accused and similarly situated co-accused has been granted anticipatory bail by a co-ordinate Bench of this Court, 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 this order, be released on anticipatory bail on furnishing bail bond of Rs. 10,000/- (Ten thousand) each with two sureties of the like amount each to the satisfaction of Exclusive Special Excise Judge-I, Nawada, in connection with Akbarpur P.S. Case No. 140 of 2023 with the 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 bond 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 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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