

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.67914 of 2023

Arising Out of PS. Case No.-156 Year-2023 Thana- LALIT NARAYAN UNIVERSITY
District- Darbhanga

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1. Sanjeev Mahto @ Sanjeeb Mahto @ Sanjeev Kumar Mahto Son of Late Mushar Mahto Resident of Mohalla - Azamnagar (Lichibara) P.s. - LNMU, District Darbhanga.
 2. Rahul Kumar Mahto @ Rahul Mahto Son of Sanjeev Mahto, Sanjeeb Mahto @ Sanjeev Kumar Mahto Resident of Mohalla - Azamnagar (Lichibara) P.s. - LNMU, District Darbhanga.

... .. Petitioner/s

Versus

The State of Bihar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Raghwendra Pratap Singh, Advocate
For the Opposite Party/s : Mr. Suresh Prasad Singh, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 11-10-2023 Heard Mr. Raghwendra Pratap Singh, learned counsel

for the petitioner and Mr. Suresh Prasad Singh, learned

Additional Public Prosecutor for the State.

2. Learned counsel for the petitioners submits that during the pendency of the present petition the petitioner no. 1, namely Sanjeev Mahto @ Sanjeeb Mahto @ Sanjeev Kumar has been arrested and as such the present petition with respect to petitioner no. 1, namely Sanjeev Mahto @ Sanjeeb Mahto @ Sanjeev Kumar has become infructuous and accordingly, he seeks permission to withdraw the anticipatory bail petition of petitioner no. 1.

3. Permission is accorded.



4. The application is dismissed as withdrawn as having become infructuous with respect to petitioner no. 1.

5. The petitioner no. 2 is apprehending his arrest in connection with L.N.M.U. P.S. Case No. 156 of 2023 F.I.R. dated 30.05.2023 registered for the offences punishable under Section 30(a) of Bihar Prohibition and Excise Act, 2016.

6. Recovery is of 142.500 litres of *foreign* liquor.

7. Learned counsel for the petitioner no. 2 submits that the petitioner has clean antecedent and has falsely been implicated in the present case on the basis of disclosure made by local villagers. 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 or the house of the petitioner rather recovery has been made from the open place and he has no concern at all with the alleged recovery of illicit liquor and except the disclosure made by local villagers, 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 petitioner under the Bihar Prohibition and Excise Act.



8. The learned Additional Public Prosecutor has vehemently opposed the prayer for anticipatory bail of the petitioner 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.

9. 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.

10. Considering the aforesaid facts, nothing has been recovered from conscious possession or the house of the petitioner and petitioner having clean antecedent, let the petitioner, above named, in the event of his 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) with two sureties of the like amount each to the satisfaction of learned Exclusive Special Judge-II (Excise), Darbhanga in connection with L.N.M.U. PS. Case No. 156 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 no. 2 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 his absence on two consecutive dates without sufficient reason, his bail bond shall be cancelled by the Court below.

2. If the petitioner no. 2 tampers 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 petitioner no. 2 and in case at any stage it is found that the petitioner no. 2 has concealed his criminal antecedent, the court below shall take step for cancellation of bail bond of the petitioner no. 2. 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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