

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.70462 of 2023**

Arising Out of PS. Case No.-352 Year-2023 Thana- BARAULI District-
Gopalganj

- =====
1. RAHUL KUMAR SON OF SURENDRA BHAGAT RESIDENT OF MOHALLA-MADHOPUR, PS- BARAULI, OP, MADHAPUR, DISTT- GOPALGANJ
 2. BITTU KUMAR SON OF CHHOTELAL SAH RESIDENT OF MOHALLA-MADHOPUR, PS- BARAULI, OP, MADHAPUR, DISTT- GOPALGANJ
 3. MANJEET KUMAR SON OF RAJESH PRASAD RESIDENT OF MOHALLA-MADHOPUR, PS- BARAULI, OP, MADHAPUR, DISTT- GOPALGANJ

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Vyas Kumar Mishra
For the Opposite Party/s : Mr.Shahabuddin Azeem @ S. Azeem

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 01-11-2023 Heard Mr. Vyas Kumar Mishra, learned counsel for the

petitioners and Mr. Shahabuddin Azeem @ S. Azeem learned

A.P.P. for the State.

The petitioners apprehend their arrest in connection
with Barauli P.S. Case No. 352 of 2023 registered for the offence
under Section 30(a) of the Bihar Prohibition and Excise Act.

Recovery is of 23.40 liters of foreign liquor.

Learned counsel appearing for the petitioners submits
that the petitioners, who are of clean antecedent, are innocent
and have falsely been implicated in this case on the basis of
disclosure made by the co-accused person namely, Bidhan Kumar



Prasad. 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 the alleged recovery has been made from the house of the co-accused, Bidhan Kumar Prasad. Save and except the disclosure made by the co-accused, no cogent material has surfaced during course of investigation suggesting the involvement of the petitioners in the alleged occurrence. He further submits that there is non-compliance of Section 100 Cr.P.C. while preparing the seizure list, 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 petitioners 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.

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.

Considering the facts and circumstances of the case



and the fact that nothing incriminating has been recovered from the possession of the petitioners and he has been made accused in this case only on the ground of disclosure of co-accused and the petitioners bear clean antecedent, 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 Additional District and Sessions Judge-II -cum- Special Judge, (Excise Act No.1), Gopalganj in connection with Barauli P.S. Case No. 352 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 petitioner. 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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