

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.71079 of 2023

Arising Out of PS. Case No.-371 Year-2023 Thana- DARIYAPUR District- Saran

1. SANTOSH RAI
2. Mantosh Rai
Both are sons of Shiv Bachan Rai , both are Village- Tarnwa Magarpal Ps-
Dariyapur Dist- Saran

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Mrityunjay Kumar Tiwary, Advocate
For the Opposite Party/s : Mr.Khurshid Anwar, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 07-11-2023 Heard Mr.Mrityunjay Kumar Tiwary, learned counsel
for the petitioners and Mr.Khurshid Anwar, learned Additional
Public Prosecutor for the State.

2. The petitioners are apprehending their arrest in
connection with Dariyapur P.S.Case No.371 of 2023, FIR dated
20.06.2023 registered for the offences punishable under Section
30(a) of Bihar Prohibition and Excise Act, 2016.

3. Recovery is of 60 liters of country made liquor and
2.88 liters of foreign liquor.

4. Learned counsel for the petitioners submits that
petitioners have clean antecedent and they have falsely been
implicated in the present case on the basis of the disclosure



made by the local Chaukidar. Further submits that from a bare perusal of the FIR as well as the seizure list that nothing has been recovered from conscious possession of the petitioners rather the recovery has been made from the Bamboo Orchard and the petitioners have no concern at all with the alleged recovery of illicit liquor or the Bamboo Orchard and except the disclosure made by the local Chaukidar, no other material has come during investigation against the petitioners to suggest the involvement of the petitioners 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. 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.

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, petitioners have clean antecedent, nothing has been recovered from conscious possession of the petitioners and the name of the petitioners have been transpired on the basis of the disclosure made by the local Chaukidar, 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 Special Judge, Excise-1st, Chapra, Saran in connection with Dariyapur P.S.Case No.371 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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