

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.74228 of 2023**

Arising Out of PS. Case No.-732 Year-2023 Thana- Excise P.S. District- Banka

1. Prashant Kumar Son Of Late Bijay Mandal R/O Village- Kanjhiya, P.S.-
Madhusudanpur, District- Bhagalpur
2. Nitish Kumar Son Of Pappu Kumar Mandal R/O Village- Kanjhiya, P.S.-
Madhusudanpur, District- Bhagalpur

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Syed Masleh Uddin Ashraf, Advocate

For the Opposite Party/s : Mrs.Indu Kumari Srivastava, APP

**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL ORDER**

2 29-11-2023 Heard learned counsel for the petitioners and

learned APP for the State.

2. In the present case, the petitioners seek bail in connection with Banka Excise P.S. Case No. 732 of 2023, registered on 24.08.2023 for the alleged offences under Section 30(a) of Bihar Prohibition and Excise Act.

3. As per prosecution case, vehicle being driven by petitioner no. 1 was stopped on suspicion for checking. Petitioner no. 2 was also sitting in the same vehicle. On search of the vehicle recovery of 160.875 litres of India made liquor



was made from the dickey of the vehicle. The petitioners were apprehended who disclosed that the recovered liquor belongs to the owner of the vehicle.

4. Learned counsel for the petitioners submits that the petitioners are innocent and have been falsely implicated in this case. Petitioner no. 1 is the driver and petitioner no. 2 is his friend and co-villager. They have no concern with the alleged recovery. They are poor persons and were doing work for the owner of the vehicle. Further there is delay in institution of the FIR as the recovery has been made on 23.08.2023 at 7.10 P.M. but the FIR has been instituted on 24.08.2023 without any date and for which there is no explanation. The seizure list contains the FIR number which shows fabrication of the document. There is no compliance of mandatory provision of Section 100 Cr.P.C. The petitioners are in custody since 23.08.2023 and charge sheet has been submitted. Petitioner no. 2 has got no criminal antecedent whereas petitioner no. 1 is having criminal antecedent of three cases of similar nature but he is on bail in all the three cases.

5. Learned APP opposes the submission made on behalf of the petitioners. Learned APP submits that petitioner no. 1 is habitual offender as he is having criminal antecedent of



three cases of similar nature.

6. Having regard to the facts and circumstances of the case and submissions made on behalf of the parties and considering the fact that petitioner no. 1 is said to be driver and petitioner no. 2 stated to be passenger in the vehicle and further considering the period of custody of the petitioners and submission of charge sheet, the petitioners above named, are directed to be released on bail on furnishing bail bonds of Rs. 20,000/- (twenty thousand) each with two sureties of the like amount each to the satisfaction of learned Additional District & Sessions Judge-V, Banka/concerned court in connection with Banka Excise P.S. Case No. 732 of 2023, subject to the conditions mentioned in Section 437(3) of the Code of Criminal Procedure and also the following conditions:

- (i) One of the bailors will be a close relative of the petitioners.
- (ii) The petitioners will remain present on each and every date fixed by the court below.
- (iii) In case of absence on three consecutive dates or in violation of the terms of the bail, the bail bonds of the



petitioners will be liable to be
cancelled by the court concerned.

(Arun Kumar Jha, J)

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