

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.75760 of 2023

Arising Out of PS. Case No.-130 Year-2023 Thana- EKMA District- Saran

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1. Santosh Singh S/O Tribhuvan Singh R/O Vill - Ekari, P.S. - Ekma, Distt. - Saran At Chhapra
 2. Bira Yadav @ Bir Kumar Yadav S/O Chandrama Yadav R/O Vill - Ekari, P.S. - Ekma, Distt. - Saran At Chhapra

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Yashraj Bardhan, Advocate

For the Opposite Party/s : Mr. Nityanand, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 29-11-2023 Heard Mr. Yashraj Bardhan, learned counsel for the petitioners and Mr. Nityanand, learned Additional Public Prosecutor for the State.

2. The petitioners are apprehending their arrest in connection with Ekma P.S. Case No. 130 of 2023, F.I.R dated 12.04.2023 registered for the offences punishable under Sections 30(a), 41 (ii) (ii) of Bihar Prohibition and Excise Act.

3. Recovery is of 45 liters of illicit liquor.

4. Learned counsel for the petitioners submits that the petitioner no. 1 carries one criminal antecedent in which he is on bail and petitioner no. 2 has clean antecedent and they have falsely been implicated in the present case. He further



submits that it appears from the F.I.R that nothing has been recovered from the conscious possession of the petitioners. He further submits that the name of the petitioners have been transpired on the basis of the disclosure made by the local people and the petitioners have no concern at all with the alleged recovery of the illicit liquor. 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. The learned Additional Public Prosecutor has vehemently opposed the prayer for anticipatory 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. Their 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, their Court, for the limited purpose of grant of anticipatory bail, is inclined to accept the submission of counsel for the petitioner.

7. Considering the aforesaid facts, nothing has been



recovered from conscious possession of the petitioners and the name of the petitioners has been transpired on the basis of the disclosure made by the local people, 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 the learned Exclusive Special Excise Court-cum Additional District Judge II, Sarant at Chhapra in connection with Ekma P.S. Case No. 130 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. 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.

2. If the petitioners 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 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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