

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.73992 of 2023

Arising Out of PS. Case No.-337 Year-2021 Thana- AMNAUR District- Saran

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1. Pankaj Kumar @ Pankaj Ray Son Of Rajeshwar Ray @ Vidhayak Ray Resident Of Village- Shekhpura, Police Station- Amnaur, District- Saran
 2. Rahul Kumar @ Rahul Ray Son Of Lalan Ray Resident Of Village- Shekhpura, Police Station- Amnaur, District- Saran

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Dhananjay Mishra, Advocate

For the Opposite Party/s : Ms. Meena Singh, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 09-11-2023 Heard Mr. Dhananjay Mishra, learned counsel for the petitioners and Ms. Meena Singh, learned Additional Public Prosecutor for the State.

2. The petitioners are apprehending their arrest in connection with Amnaur P.S. Case No. 337 of 2021, F.I.R dated 22.12.2021 registered for the offences punishable under Section 30(a) of Bihar Prohibition and Excise Act.

3. Recovery is of 150 liters of country made liquor.

4. Learned counsel for the petitioners submits that the petitioners have 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 and the name of the petitioners has been transpired on the basis of the disclosure made by the local chowkidar. He further submits that except the aforesaid, no other material has come during investigation to suggest the involvement of the petitioners in the present occurrence. He further submits that the co-accused, namely, Santosh Rai @ Santosh Kumar against whom there is similar allegation has been granted anticipatory bail by a Co-ordinate Bench of this Court vide order dated 17.10.2022 passed in Cr. Misc. No. 53906 of 2022. 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. 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.

7. Considering the aforesaid facts, nothing has been recovered from conscious possession of the petitioners and the petitioners have clean antecedent and the name of the petitioners have been transpired on the basis of the disclosure made by the local chowkidar, 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 Additional District Judge II-cum- 1st Exclusive Special Judge Excise, Saran at Chapra in connection with Amnaur P.S. Case No. 337 of 2021, 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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