

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.76014 of 2023

Arising Out of PS. Case No.-149 Year-2021 Thana- AMBA District- Aurangabad

1. Parmeshwar Sahani Son of Sukhdeo Sahani R/o vill - Jiwdhara, P.s. - Pipra Kothi, Distt. - East Champaran, Motihari
2. Rakesh Manjhi Son of Naresh Manjhi R/o vill - Jiwdhara, Musahari Tola, P.s. - Pipra Kothi, Distt. - East Champaran, Motihari

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Sharda Nand Mishra, Advocate
For the Opposite Party/s : Mr. Shantanu Kumar, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 29-11-2023 Heard Mr. Sharda Nand Mishra, learned counsel for the petitioners and Mr. Shantanu Kumar, learned Additional Public Prosecutor for the State.

2. The petitioners are apprehending their arrest in a case registered for the offences punishable under Section 30(a) of Bihar Prohibition and Excise Act, 2018.

3. Recovery is of 2541.600 liters of *English* liquor.

4. Learned counsel for the petitioners submits that the petitioners have clean antecedents and have falsely been implicated in the present case. He further submits that the allegation as alleged in the F.I.R. is false and fabricated and the petitioners have not committed any offence as alleged in the



F.I.R. He further submits that from perusal of the F.I.R. as well as seizure list nothing has been recovered from the conscious of the petitioners rather recovery has been made from the truck in question and the petitioners have no concern at all with the alleged recovery of illicit liquor or the truck in question. He further submits that the name of the petitioners have been transpired on the basis of disclosure made by Raja Kumar, who is driver of the truck in question. 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 petitioners.

7. Considering the aforesaid facts, nothing has been recovered from conscious possession of the petitioners and the name of the petitioners have been transpired on the basis of disclosure made by co-accused person and the petitioners having clean antecedents, 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 First, Aurangabad, in connection with Amba PS. Case No. 149 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 bonds shall be cancelled 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.

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 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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