

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.75935 of 2023**

Arising Out of PS. Case No.-215 Year-2023 Thana- MOHAMMADPUR
District- Gopalganj

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1. MOHIT NAT Son of Jelar Nut @ Jelar Nat R/o vill - Pakri, P.s. - Sidhwalia,
Distt. - Gopalganj
 2. RAHUL NAT Son of Jelar Nut @ Jelar Nat R/o vill - Pakri, P.s. - Sidhwalia,
Distt. - Gopalganj

... .. Petitioner/s

Versus

The State of Bihar Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Setu Prateek

For the Opposite Party/s : Mr.Suman Kumari Singh

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CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 29-11-2023 Heard Mr. Setu Prateek, learned counsel for the

petitioners and Mr. Suman Kumari Singh, learned A.P.P. for

the State.

The petitioners apprehend their arrest in
connection with Mohammadpur P.S. Case No. 215 of 2023
registered for the offence under Section 30(a) of the Bihar
Prohibition and Excise Act.

Recovery is of 40 liters of country made liquor.

Learned counsel appearing for the petitioners
submits that the petitioners, who are of clean antecedent,
are innocent and have falsely been implicated in this case



merely on the basis of disclosure made by the local chaukidar. He further submits that on bare perusal of the F.I.R. and the seizure list, it appears that nothing has been recovered from the house or conscious possession of the petitioner rather the alleged recovery has been made from the road side. He further submits that the petitioners have no concern at all with the alleged recovery. Save and except the disclosure of the local chaukidar, no cogent material has surfaced during course of investigation suggesting the involvement of the petitioner in the alleged occurrence. He further submits that there is non-compliance of Section 100 Cr.P.C. while preparing the seizure list, therefore, no case would be made out against the petitioner under the Bihar Prohibition and Excise Act.

Learned A.P.P. for the State has vehemently opposed the prayer for grant of anticipatory bail to the petitioner referring to the provisions contained in Section 76(2) of the Bihar Prohibition and Excise Act and submits that this application seeking pre-arrest bail would not be maintainable.

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.

Considering the facts and circumstances of the case and the fact that nothing incriminating has been recovered from the possession of the petitioners and they have been made accused in this case at the behest of local chaukidar and the petitioners are having clean antecedent, let the, above named, petitioners, in the event of their arrest or surrender before the court below within a period of four weeks, 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 Additional District Judge-II -cum- Special Judge, (Excise Court No.I), Gopalganj in connection with Mohammadpur P.S. Case No. 215 of 2023, subject to the conditions laid down under Section 438(2) of the Cr.P.C. as also with the 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 canceled 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.

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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