

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.7435 of 2024

Arising Out of PS. Case No.-542 Year-2023 Thana- KHAJEKALA District- Patna

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1. Munna Kumar S/o Sukhari Rai R/o vill-Begma ki haweli, P.S-Khajekalan, Distt.-Patna.
 2. Munni Devi D/o Sukhari Rai R/o vill-Begma ki haweli, P.S-Khajekalan, Distt.-Patna.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Jay Ram Prasad, Advocate
For the State	:	Md. Iftexhar Mahmood, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

3 21-03-2024 Heard Mr. Jay Ram Prasad, learned counsel for the petitioners and Mr. Iftexhar Mahmood, learned Additional Public Prosecutor for the State.

2. The petitioners are apprehending their arrest in connection with Khajekalan P.S. Case No. 542 of 2023, F.I.R dated 16.12.2023 registered for the offences punishable under Section 30(a) of Bihar Prohibition and Excise Act.

3. Recovery is of 5.4 liters of illegal wine.

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 the allegation as alleged in the F.I.R is false and fabricated. He further submits that it appears from the F.I.R that nothing has



been recovered from the conscious possession of the petitioners rather the recovery has been made from the motor cycle in question which was standing in the courtyard of the petitioner and from the motorcycle 5.4 litres of illegal wine was recovered. 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



petitioners have clean antecedent, 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 bonds of Rs. 10,000/- (Ten Thousand) each with two sureties of the like amount each to the satisfaction of the learned Special Judge Excise, Patna City in connection with Khajekalan P.S. Case No. 542 of 2023, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure and with other following conditions:-

(i). 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.

(ii). 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.

(iii). 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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