

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.16824 of 2024

Arising Out of PS. Case No.-127 Year-2023 Thana- RUDRAPUR District- Madhubani

1. Phulsari Devi @ Fulazari Devi Wife of Gaurishankar Paswan @ Guari Shankar Paswan, Resident of Village- Gour Andhra, P.S.- Rudrapur, District- Madhubani.
2. Gayatri Devi Wife of Ramdev Paswan, Resident of Village- Gour Andhra, P.S.- Rudrapur, District- Madhubani.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Jitendra Kumar Bharti, Advocate
For the Opposite Party/s : Mr. Md. Iftekhar Mahmood, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 02-04-2024 Heard Mr. Jitendra Kumar Bharti, the learned counsel for the petitioners and Mr. Md. Iftekhar Mahmood, the learned Additional Public Prosecutor for the State.

2. The petitioners are apprehending their arrest in connection with Rudrapur PS Case No. 127 of 2023, FIR dated 03.11.2023, registered for the offences punishable under Sections 272 and 273 read with Section 34 of the Indian Penal Code and under Section 30(a) of the Bihar Prohibition and Excise Act.

3. Recovery is of 30 litres of country-made liquor.

4. Learned counsel for the petitioners submits that petitioners have clean antecedent and they have falsely been



implicated in the present case. He further submits that according to the FIR and seizure list nothing has been recovered from the conscious possession of the petitioners, rather the recovery has been made from a hut situated near the house of the petitioners and altogether thirty litres of country-made liquor has been recovered from the place of occurrence. 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 and circumstances and the fact that petitioners have clean antecedent, nothing has been recovered from their conscious possession and there is non-compliance of Section 100 of Cr.P.C., let the petitioners, above-named, in the event of their arrest or surrender before the trial Court within a period of thirty days from the date of receipt of the order, be released on anticipatory 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 Special Judge, Excise Act, Jhanjharpur, District- Madhubani, where the case is pending in connection with **Rudrapur PS Case No. 127 of 2023**, subject to the conditions as laid down under Section 438(2) of the Cr.P.C. and also the following conditions:-

(i). Petitioners shall co-operate in the trial and shall be properly represented on each and every date fixed by the trial Court and shall remain physically present as directed by the trial Court and on their absence on two consecutive dates without sufficient reason, their bail bond shall be cancelled by the trial Court.

(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 trial Court 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 trial Court 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)

Shahnawaz/-

U		T	
---	--	---	--

