

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.20894 of 2024

Arising Out of PS. Case No.-101 Year-2023 Thana- PARWALPUR District- Nalanda

1. Dharmveer Chauhan @ Bihari Chauhan
2. Sharwan Chauhan
3. Baiju Chauhan.
All S/o Balchand Chauhan @ Valchand Jamadar @ Jamadar Chauhan
4. Gorelal Chauhan S/o Naresh Chauhan
5. Vicky Chauhan S/o Naresh Chauhan
6. Jhunni Devi @ Jhuniya Devi D/o Dularchand Jamdar @ Dularchand Chauhan .
All R/o vill - Fatehpur, P.S. - Parwalpur, Distt. - Nalanda

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Ganesh Sharma, Advocate
For the Opposite Party/s : Mr.Mithlesh Kumar Khare, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

4 12-07-2024 Heard Mr.Ganesh Sharma, learned counsel for the

petitioners and Mr.Mithlesh Kumar Khare, learned Additional

Public Prosecutor for the State.

2. The petitioners are apprehending their arrest in connection with Parwalpur P.S.Case No.101 of 2023,FIR dated 15.06.2023 registered for the offences punishable under Sections147,148,149,323,448,341,427,353,307,504,506 of IPC and Sections 30(a) and 45 of Bihar Prohibition and Excise (Amendment) Act, 2018.

3. Recovery is of 10 liters of country made Chulai



Wine.

4. Learned counsel for the petitioners submits that the petitioners have falsely been implicated in the present case. From a bare perusal of the FIR it appears that nothing has been recovered from conscious possession of the petitioners and from a bare perusal of the FIR it appears that the name of the petitioners have been transpired during investigation on the basis of the disclosure made by the local Chaukidar and it appears from the seizure list that the recovery has been made from the road side. It is further alleged in the FIR that petitioner No.1, namely, Dharmveer Chauhan @ Bihari Chauhan has thrown the Gallon and fled away from the place of occurrence and co-accused person, namely, Mukesh Chauhan and Nitu Devi have been granted privilege of anticipatory bail by this Court vide order dated 31.01.2024 passed in Cr.Misc. No.1901 of 2024. 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. Learned A.P.P. for the State has vehemently opposed the prayer for bail of the petitioner 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. Further submits that the petitioner Nos.1 to 5 carry one more case other than the present one but fairly submits that they are on bail in the said case and petitioner No.6 has clean antecedent, as mentioned in para-2 of the supplementary affidavit.

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) PLJR 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, 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 Addl. District and Sessions Judge-IV-cum-Special Judge (Excise)-II, Nalanda at Biharsharif in connection with Parwalpur P.S.Case No.101 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 bond 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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