

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.47837 of 2024

Arising Out of PS. Case No.-73 Year-2024 Thana- AAJAM NAGAR District- Katihar

1. Kishan Kumar Poddar @ Krishna Kumar Poddar son of Kalander Poddar
R/o- Poddar Tola P.S- Azam Nagar Dist- Katihar
2. Prakash Kumar Sah son of Subhash Sah @ Subhash Chandra Sah village-
Alampur P.S- Azam Nagar Dist- Katihar

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ajit Kumar Singh, Advocate

For the Opposite Party/s : Mrs. Indu Kumari Srivastava, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

3 07-08-2024 It appears from the record that vide order dated 10.07.2024 the bail petition with respect to petitioner no. 1, namely, Kishan Kumar Poddar @ Krishna Kumar Poddar stands dismissed as withdrawn.

2. Heard Mr. Ajit Kumar Singh, learned counsel for the petitioner and Mrs. Indu Kumari Srivastava, learned Additional Public Prosecutor for the State.

3. The petitioner (except petitioner no. 1) is apprehending his arrest connection with Azam Nagar P.S. Case No. 73 of 2024, F.I.R. dated 23.02.2024 registered for the offences punishable under Section 30(a) of the Bihar Prohibition & Excise Act, 2022.



4. Recovery is of 03 (three) liters of *foreign liquor*.

5. Learned counsel for the petitioner (except petitioner no. 1) submits that the petitioner has clean antecedent and he has falsely been implicated in the present case. He further submits that it appears from the F.I.R. as well as seizure list that nothing has been recovered from the conscious possession of the petitioner no. 2 and the name of the petitioner no. 2 has been transpired on the basis of disclosure made by local choukidar/local villager. Therefore, the recovery cannot be attributed to the petitioner no. 2. 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 petitioner no. 2 under the Bihar Prohibition and Excise Act.

6. The learned Additional Public Prosecutor has vehemently opposed the prayer for anticipatory bail of the petitioner no. 2 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. He further submits that the petitioner no. 2 carries four more cases of similar nature other than the present one but fairly submits on the basis of paragraph-3 of the bail petition that the petitioner no. 2 is on bail in all the pending matters.



7. 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 no. 2.

8. Considering the aforesaid facts and the fact that the name of the petitioner no. 2 has been transpired on the basis of disclosure made by local choukidar/local villager as well as nothing has been recovered from the possession of the petitioner no. 2, let the petitioner no. 2, above named, in the event of his 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) with two sureties of the like amount each to the satisfaction of learned Additional District & Sessions Judge-cum-Exclusive Excise Court No. 2, Incharge, Katihar in connection with Azam Nagar PS. Case No. 73 of 2024, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure and with other following conditions:-

1. Petitioner (except petitioner no. 1) 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 his absence on two consecutive dates without sufficient reason, his bail bond shall be cancelled by the Court below.

2. If the petitioner (except petitioner no. 1) tampers 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 petitioner (except petitioner no. 1) and in case at any stage it is found that the petitioner (except petitioner no. 1) has concealed his criminal antecedents, the court below shall take step for cancellation of bail bond of the petitioner (except petitioner no. 1). 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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