

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.35380 of 2024

Arising Out of PS. Case No.-40 Year-2024 Thana- CHACKMEHSI District- Samastipur

1. Vipin Kumar Son of Mahendra Paswan, Resident of Village - Kudhwa, P.S. - Chakmehshi, District - Samastipur.
2. Dhiraj Kumar @ Dhiraj Paswan Son of Mahendra Paswan, Resident of Village - Kudhwa, P.S. - Chakmehshi, District - Samastipur.

... .. Petitioners

Versus

The State of Bihar

... .. Opposite Party

Appearance:

For the Petitioners : Mr. Ajay Kumar, Advocate

For the Opposite Party : Mr. Anant Kumar 1, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

3 31-07-2024 Heard Mr. Ajay Kumar, the learned counsel for the petitioners and Mr. Anant Kumar 1, the learned Additional Public Prosecutor for the State.

2. The petitioners are apprehending their arrest in connection with Chakmehshi PS Case No. 40 of 2024, FIR dated 20.03.2024, registered for the offence punishable under Section 30(a) of the Bihar Prohibition and Excise Act.

3. Recovery is of 124.5 litres of foreign liquor.

4. Learned counsel for the petitioners submits that petitioners have clean antecedent and they have falsely been implicated in the present case and the allegation levelled in the FIR is false and fabricated and the petitioners have not



committed any offence as alleged in the FIR. He further submits that according to the FIR and seizure list, it appears that nothing has been recovered from the conscious possession of the petitioners and merely on the basis of suspicion the petitioners have falsely been implicated in the present case. 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 for the State on the other hand 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 mainly the facts that petitioners have clean antecedent, nothing has been recovered from their conscious possession and their names transpired merely on the basis of suspicion, let the petitioners, above-named, in the event of their arrest or surrender before the learned 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 Exclusive Special Judge Excise Court-1, Samastipur, where the case is pending in connection with **Chakmehshi PS Case No. 40 of 2024**, 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 learned trial Court and shall remain physically present as directed by the learned trial Court and on their absence on two consecutive dates without sufficient reason, their bail bond shall be cancelled by the learned 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 learned 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 learned 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)

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