

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.38272 of 2024

Arising Out of PS. Case No.-26 Year-2024 Thana- SALAIYA District- Aurangabad

1. Gautam Yadav @ Gautam Kumar Son of Arjun Yadav Resident of Village- Pirwa, P.S.- Salaiya, Dist- Aurangabad , Bihar
2. Satyendra Yadav @ Satyendra Kumar Son of Ramdeo Yadav Resident of Village- Gajraj Bigha, P.S- Salaiya, Dist- Aurangabad, Bihar
3. Anil Chaudhary Son of Radhe Chaudhary Resident of Village- Gajraj Bigha, P.S- Salaiya, Dist- Aurangabad, Bihar

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mrs. Leelawati Kumari, Advocate
For the Opposite Party/s : Mr. Nitya Nand Tiwary, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 26-06-2024 Heard Mrs. Leelawati Kumari, learned counsel for the petitioners and Mr. Nitya Nand Tiwary, learned Additional Public Prosecutor for the State.

2. The petitioners are apprehending their arrest connection with Salaiya P.S. Case No. 26 of 2024, F.I.R. dated 25.03.2024 registered for the offences punishable under Sections 30(a) of the Bihar Prohibition & Excise Amendment Act, 2018.

3. Recovery is of 40 liters of Chulai *Mahua* liquor.

4. Learned counsel for the petitioners submits that the petitioner no.1 carries two more cases, petitioner no. 2 carries



three more cases and petitioner no. 3 carries three more cases other than the present one and they have falsely been implicated in the present case due to previous criminal antecedent of the petitioners. 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 petitioners rather recovery has been made from the Chalho mountain which was situated in the District of Aurangabad and the name of these petitioners have been transpired on the basis of disclosure made by local people. Therefore, the recovery cannot be attributed to the petitioners. 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. Learned APP for the State further submits that the petitioners are named in the F.I.R. and apart from that the petitioner no. 1 carries two more cases other than the present one (in which he is on bail in one case),



petitioner no. 2 carries three more cases other than the present one (in which he is on bail in one case) as well as petitioner no. 3 carries three more cases other than the present one (in which he is on bail in one case).

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 name of the petitioners have been transpired on the basis of disclosure made by local people, 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 Special Judge, Excise Court No. 1, Aurangabad in connection with Salaiya PS. Case No. 26 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. 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.
2. If the petitioners 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 petitioners and in case at any stage it is found that the petitioners have concealed their criminal antecedents, 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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