

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.38291 of 2024

Arising Out of PS. Case No.-104 Year-2024 Thana- BIHIA District- Bhojpur

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1. Arun Kumar @ Arun Kumar Singh S/O Late Shankar Deyal Singh R/O Village- Mahuaon, P.S.- Bihiyan, District-Bhojpur
 2. Bitu Kumar S/O Harendra Singh R/O Village- Mahuaon, P.S.- Bihiyan, District-Bhojpur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mrs. Malti Kumari, Advocate
For the Opposite Party/s : Mr. Anil Kumar, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 26-06-2024 Heard Mrs. Malti Kumari, learned counsel for the petitioners and Mr. Anil Kumar, learned Additional Public Prosecutor for the State.

2. The petitioners are apprehending their arrest connection with Bihiyan P.S. Case No. 104 of 2024, F.I.R. dated 31.03.2024 registered for the offences punishable under Section 30(a) of the Bihar Prohibition & Excise Amendment Act, 2018.

3. Recovery is of 30 liters of *Mahua* liquor.

4. Learned counsel for the petitioners submits that the petitioners have clean antecedents and they have falsely been implicated in the present case on the basis of disclosure made by local choukidar. She further submits that it appears from the



F.I.R. as well as seizure list that nothing has been recovered from the possession or the house of the petitioners rather recovery has been made from behind the house of the petitioners and the petitioners have no concern at all with the alleged recovery of illicit liquor. 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.

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 petitioners having clean antecedents, 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 Exclusive Special Excise Court No. 1st, Bhojpur, Ara in connection with Bihiyan PS. Case No. 104 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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