

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.60469 of 2024

Arising Out of PS. Case No.-256 Year-2024 Thana- MADHUBAN District- East Champaran

1. Sanjay kumar kushwaha S/o Late Jaynarayan Bhagat R/O village - Sirauli, P.S - Madhuban (Garahiya O.P), Dist - East Champaran.
2. Satyapal Arya S/o Ramashish Bhagat R/O village - Sirauli, P.S - Madhuban (Garahiya O.P), Dist - East Champaran.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Ms. Usha Kumari, Advocate
For the State : Mr. Anand Kishore Choudhary, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 11-09-2024 Heard Ms. Usha Kumari, learned counsel for the

petitioners and Mr. Anand Kishore Choudhary, learned

Additional Public Prosecutor for the State.

2. The petitioners are apprehending their arrest in connection with Madhuban (Garahiya O.P.) P.S. Case No. 256 of 2024, G.R. No. 604 of 2024, F.I.R dated 23.06.2024 registered for the offences punishable under Section 30(a) of Bihar Prohibition and Excise Act.

3. Recovery is of 427.32 of foreign liquor.

4. Learned counsel for the petitioners submit that the petitioners have clean antecedent and they have 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 petitioners rather recovery have been made from the pick up van which was standing in front of the house of the petitioner no.1. He further submits that petitioners have no concern at all with the alleged recovery or the pickup van in question and they have been made accused on the basis of the information furnished by the local people. 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 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, nothing has been recovered from conscious possession of the petitioners and the petitioners having clean antecedent and they have been made accused in the present case only on the basis of the suspicion, 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 bonds of Rs. 10,000/- (Ten Thousand) each with two sureties of the like amount each to the satisfaction of the learned Special Excise Court, East Champaran, Motihari in connection with Madhuban (Garahiya O.P.) P.S. Case No. 256 of 2024, G.R. No. 604 of 2024, 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 bonds shall be cancelled by the Court below.



2. 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.

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 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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