

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.67524 of 2024

Arising Out of PS. Case No.-5 Year-2023 Thana- BARHARIA District- Siwan

1. Raju Manjhi Son of Late Surendra Manjhi, R/O-Village - Koiri Gawan Yogi Tola, P.S.- Barharia, District- Siwan
2. Dalu Manjhi Son of Late Jamuna Manjhi R/O-Village - Koiri Gawan Yogi Tola, P.S.- Barharia, District- Siwan

... .. Petitioners

Versus

The State of Bihar

... .. Opposite Party

Appearance :

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

For the Opposite Party/s : Mr. (Dr.) Kumar Uday Pratap, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 03-10-2024 Heard Mr. Sunil Kumar Singh, the learned counsel

for the petitioners and Mr. (Dr.) Kumar Uday Pratap, the learned

Additional Public Prosecutor for the State.

2. The petitioners are apprehending their arrest in

connection with Barharia PS Case No. 05 of 2023, FIR dated

02.01.2023, registered for the offences punishable under Section

30(a) of the Bihar Prohibition and Excise Act.

3. Recovery is of 30 litres of country made liquor.

4. Learned counsel for the petitioners submits that

petitioners have falsely been implicated in the present case. He

further submits that according to the FIR and seizure list,

nothing has been recovered from the conscious possession of



the petitioners, rather the recovery has been made from a water tank, which is an open place. He further submits that name of petitioners transpired on the basis of suspicion and except suspicion no other cogent material has come during investigation which suggests the involvement of the petitioners in the present occurrence. 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. He further submits that petitioner no. 1 carries one criminal antecedent of similar nature other than the present, but he fairly admits the petitioner no. 1 is on bail in the pending matter and petitioner no. 2 has clean antecedent.

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 fact that nothing has been recovered from conscious possession of the petitioners, 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 Court of Exclusive Special Excise Court No. 1, Siwan, where the case is pending in connection with **Barhariya PS Case No. 05 of 2023**, 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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