

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.1921 of 2024

Arising Out of PS. Case No.-395 Year-2023 Thana- UJIYARPUR District- Samastipur

1. Jagdish Mahto S/O Sogarath Mahto, R/O Village-Lakhanipur Mahesh Patti, P.S.-Ujiyarpur, District-Samastipur.
2. Sobha Devi W/O Jagdish Mahto, R/O Village- Lakhanipur Mahesh Patti, P.S.-Ujiyarpur, District-Samastipur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Raja Ram Mishra, Advocate

For the Opposite Party/s : Mr. Sanjay Kumar Pandey, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 31-01-2024 Heard Mr. Raja Ram Mishra, the learned counsel

for the petitioners and Mr. Sanjay Kumar Pandey, the learned

Additional Public Prosecutor for the State.

2. The petitioners are apprehending their arrest in

connection with Ujiyarpur PS Case No. 395 of 2023, FIR dated

20.10.2023, registered for the offences punishable under

Sections 272 and 273 of the Indian Penal Code and under

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

3. Recovery is of 06 litres of country made liquor.

4. Learned counsel for the petitioners submits that

petitioners have clean antecedent and they 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 or from their house, rather the recovery was made from outside of the house of the petitioners. The names of the petitioners have been transpired on the basis of disclosure made by the local people. He further submits that petitioners have no concern at all with the recovery of the alleged liquor and they have been made accused due to village politics. 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, as nothing has been recovered from conscious possession of the petitioners and the petitioners have clean antecedent, 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 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 Special Judge, Excise Court No. 1, Samastipur, where the case is pending in connection with **Ujiyarpur PS Case No. 395 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 court and shall remain physically present as directed by the Court and on their absence on two consecutive dates without sufficient reason, their bail bond shall be cancelled by the Court below.

(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 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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