

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.2153 of 2024

Arising Out of PS. Case No.-456 Year-2023 Thana- SAKRA District- Muzaffarpur

1. Aman Kumar Chaudhary @ Aman Don S/O MOHAN CHAUDHARY VILLAGE- DHOLI BAZAR, PS. SAKRA, DIST. MUZAFFARPUR.
2. ABHISHEK KUMAR CHAUDHARY S/O MOHAN CHAUDHARY VILLAGE- DHOLI BAZAR, PS. SAKRA, DIST. MUZAFFARPUR.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Santosh Kumar, Advocate

For the Opposite Party/s : Mr. Md. Anzarul Haque Sahara, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 31-01-2024 Heard Mr. Santosh Kumar, learned counsel for the petitioners and Mr. Md. Anzarul Haque Sahara, learned Additional Public Prosecutor for the State.

2. The petitioners are apprehending their arrest connection with Sakra P.S. Case No. 456 of 2023, F.I.R. dated 15.09.2023 registered for the offences punishable under Sections 30(a) of the Bihar Prohibition & Excise Act, 2018.

3. Recovery is of 12.375 liters of *foreign* liquor.

4. Learned counsel for the petitioners submits that the petitioner no. 2 has clean antecedent whereas petitioner no. 1 carries one more case other than the present one in which he is on bail. He further submits that the petitioners have been falsely implicated in the present case on the basis of disclosure made by



apprehended co-accused person namely Mohan Chaudhary. He further submits that nothing has been recovered from the conscious possession of the petitioners and except the disclosure made by co-accused person, no other cogent material has come during investigation to suggest the involvement of the petitioners in the present occurrence. 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) PLJ.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 co-accused person, 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, Exclusive Special Court Excise-I, Muzaffarpur in connection with Sakra PS. Case No. 456 of 2023, 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 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 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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