

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.3542 of 2025

Arising Out of PS. Case No.-107 Year-2024 Thana- SAHIYARA District- Sitamarhi

1. Fekan Mukhiya S/O Ram Awatar Mukhiya R/O Hanuman Nagar, PS- Sahiyara, Dist.- Sitamarhi
2. Kalebar Mukhiya @ Ram Kalebar Kumar S/O Rajdev Mukhiya R/O Hanuman Nagar, PS- Sahiyara, Dist.- Sitamarhi

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Hans Lal Kumar, ADvocate

For the Opposite Party/s : Mrs. Indu Kumari Srivastava, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 12-02-2025 Heard Mr. Hans Lal Kumar, learned counsel for the petitioners and Mrs. Indu Kumari Srivastava, learned Additional Public Prosecutor for the State.

2. The petitioners are apprehending their arrest connection with Sahiyara P.S. Case No. 107 of 2024, F.I.R. dated 08.08.2024 registered for the offences punishable under Section 30(a) of the Bihar Prohibition & Excise Act.

3. Recovery is of 118.500 liters of Nepali Sufi liquor.

4. Learned counsel for the petitioners submits that the petitioners are innocent and they have falsely been implicated in the present case. He further submits that from perusal of the F.I.R. as well as seizure list it appears that nothing has been



recovered from the conscious possession of the petitioner rather recovery has been made near the Jhanda Chowk between Laxmipur Hanuman Nagar and the name of the petitioners have been transpired on the basis of disclosure made by local choukidar. Therefore, the recovery cannot be attributed to the petitioner. There is non-compliance with mandatory procedure prescribed for recovery under Section 100 of Cr. P.C./ Section 103 of BNSS, 2023 No case, whatsoever, would be made out against the petitioner 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. He further submits that the petitioners carries one more case of similar nature but fairly submits on the basis of paragraph-3 of the bail petition that the petitioners are on bail in the pending matter.

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 that nothing has been recovered from conscious possession of the petitioners rather recovery has been made from the road side and the name of the petitioners have been transpired on the basis of disclosure made by local choukidar, 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 Excise Court-I, Sitamarhi in connection with Sahiyara PS. Case No. 107 of 2024, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure/Section 482(2) of BNSS, 2023 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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