

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.5149 of 2025

Arising Out of PS. Case No.-242 Year-2024 Thana- GWALPARA District- Madhepura

1. Birendra Das S/o- Late Din Narayan Das @ Late Dip Narayan Das Village- Gwalpuara W.No-5, Ps- Gwalpura Dist- Madhepura
2. Raushni Devi @ Raushni Devi W/o- Birendra Das Village- Gwalpuara W.No-5, Ps- Gwalpura Dist- Madhepura

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Amarnath Jha, Advocate

For the Opposite Party/s : Mr. Nityanand, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 15-02-2025 Heard Mr. Amarnath Jha, learned counsel for the petitioners and Mr. Nityanand, learned Additional Public Prosecutor for the State.

2. The petitioners are apprehending their arrest in connection with Gwalpara P.S. Case No. 242 of 2024, F.I.R. dated 18.11.2024 registered for the offences punishable under Section 30(a) of the Bihar Prohibition and Excise (Amendment) Act, 2022.

3. Recovery is of 45 litres of foreign liquor.

4. Learned counsel for the petitioners submits that the petitioners have clean antecedents 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 possessions of the petitioners rather recovery has been made from the shop of co-accused Amarchand Kumar who happens to be the son of the petitioners. He further submits that except the fact that the petitioners are father and mother of co-accused person namely Amarchand Kumar and merely on that basis they have been made accused in the present case. 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./ Section 103 of BNSS, 2023 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 and circumstance of the case and the fact that the petitioners having clean antecedents and nothing has been recovered from the conscious possessions of the petitioners and they have been made accused merely on the ground that recovery has been made from the shop of petitioners' son, 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 District & Additional Sessions Judge-V-cum-Special Judge Excise Court, 1st, Madhepura in connection with Gwalpara PS. Case No. 242 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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