

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.9058 of 2025

Arising Out of PS. Case No.-142 Year-2024 Thana- CHORAUT District- Sitamarhi

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1. Ram Nath Mukhiya Son of Late Niras Mukhiya Resident Of Village- Choraut Ward No. 4, PS- Choraut, Distt.- Sitamarhi
 2. Shoshan Mukhiya @ Sheshan Mukhiya @ Sushindra Mukhiya Son of Kailash Mukhiya Resident Of Village- Choraut Ward No. 4, PS- Choraut, Distt.- Sitamarhi

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

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

For the Opposite Party/s : Mr. Rana Randhir Singh, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 06-03-2025 Heard Mr. Sanjay Kumar, learned counsel for the petitioners and Mr. Rana Randhir Singh, learned Additional Public Prosecutor for the State.

2. The petitioners are apprehending their arrest connection with Choraut P.S. Case No. 142 of 2024, F.I.R. dated 03.12.2024 registered for the offences punishable under Sections 37(B), 30(a) of the Bihar Prohibition and Excise Act, 2022.

3. The case relates to recovery of 126 litres of *Nepali* country made liquor.

4. Learned counsel for the petitioners submits that the petitioner no. 1 having clean antecedent and petitioner no. 2



carries one more case other than the present one and they have been falsely 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 possession of the petitioners rather recovery has been made from the back side house of co-accused person namely Heera Mukhiya. He further submits that the petitioner has no concern at all with the alleged recovery of illicit liquor or the Heera Mukhiya and merely on the basis of suspicion the petitioner has 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 petitioner under the Bihar Prohibition and Excise Act.

5. The learned Additional Public Prosecutor has vehemently opposed the prayer for anticipatory bail of the petitioner 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 circumstances of the case and the fact that nothing has been recovered from the conscious possessions of the petitioners and the recovery has been made behind the house of co-accused Heera Mukhiya as well as petitioner no. 1 having 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 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 Excise Court-II, Sitamarhi in connection with Choraut PS. Case No. 142 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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