

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.17795 of 2025

Arising Out of PS. Case No.-327 Year-2021 Thana- BAISI District- Purnia

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1. Matin Ahamad @ Matin S/O Kamaruddin Resident of Village- Laliyana, P.S- Kithore, District- Meerut (Uttar Pradesh)
 2. Musahid Ali @ Musahid S/O Jarif Ahmad Resident of 458 VPO, Laliyana, P.S- Kithore, District- Meerut (Uttar Pradesh)

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Md Fazle Karim, Advocate

For the Opposite Party/s : Mr. Nawal Kishore Prasad, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 21-04-2025 Heard Mr. Md Fazle Karim, learned counsel for the petitioners and Mr. Nawal Kishore Prasad, learned Additional Public Prosecutor for the State.

2. The petitioners are apprehending their arrest in connection with Baisi P.S. Case No. 327 of 2021, F.I.R dated 16.11.2021 registered for the offences punishable under Sections 414, 272, 273, 34 of Indian Penal Code and Sections 30(a), 41 and 47 of Bihar Prohibition and Excise Act.

3. Recovery is of 1800 liters of foreign liquor.

4. Learned counsel for the petitioners submits that the petitioners have clean antecedent and have falsely been implicated in the present case. He further submits that the



allegation as alleged in the F.I.R is false and fabricated. He further submits that it appears from the F.I.R that nothing has been recovered from the conscious possession of the petitioners rather the recovery has been made from truck bearing registration no. UP15CT3117 and petitioners have been made accused merely on the ground that petitioner no.1 is owner of the truck in question and petitioner no.2 is contractor who had taken the truck on lease from petitioner no.1. It appears from the FIR and seizure list that both drivers were apprehended and petitioners have no role at all in the present case. There is non-compliance with mandatory procedure prescribed for recovery under Section 100 of Cr.P.C / Section 103 of Bhartiya Nagarik Suraksha Sanhita. 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.

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, nothing has been recovered from conscious possession of the petitioners and the petitioners have clean antecedent and petitioners have been made accused merely on the ground that petitioner no.1 is owner of the truck in question and petitioner no.2 is contractor who had taken the truck on lease from petitioner no.1 , 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 the learned Exclusive Special Excise Judge Court No.1, Purnea in connection with Baisi P.S. Case No. 327 of 2021, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure / Section 482(2) of the Bhartiya Nagarik Suraksha Sanhita and with other 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 bonds 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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