

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.38208 of 2025

Arising Out of PS. Case No.-329 Year-2025 Thana- SAHARSA SADAR District- Saharsa

1. Sajjan Sharma S/O Late Maheshwari Sharma Resident of Village- Kharagpur, Ward No. 10, P.S- Sonbarsa Kachahari, District- Saharsa.
2. Arun Sharma S/O Late Maheshwari Sharma Resident of Village- Kharagpur, Ward No. 10, P.S- Sonbarsa Kachahari, District- Saharsa.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Binod Kumar Sinha, Advocate

For the Opposite Party/s : Mr. Ramesh Chandra, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

2 19-06-2025 Heard Mr. Binod Kumar Sinha, learned counsel for the petitioners and Mr. Ramesh Chandra, learned Additional Public Prosecutor for the State.

2. The petitioners are apprehending their arrest in connection with Saharsa Sadar (Sonbarsa Kachahri) P.S. Case No. 329 of 2025, F.I.R dated 13.03.2025 registered for the offences punishable under Section 30(a) of Bihar Prohibition and Excise Act.

3. Recovery is of 7.080 liters of foreign liquor.

4. Learned counsel for the petitioners submits that the petitioners are innocent 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 dilapidated house of petitioner no.1 and same is abandoned place and no one reach or reside there. The name of the petitioners transpired merely on the basis of suspicion and secret information. He further submits that petitioner no.1 is brother of petitioner no.2. 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. He further submits that petitioner no.1 has clean antecedent and petitioner no.2 has got two criminal antecedents other than the present one but fairly submits on the basis of paragraph-3 of the bail petition that he is on bail in the pending matters.



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 recovery has been made from dilapidated house of 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 Judge (Excise)-II, Saharsa in connection with Saharsa Sadar (Sonbarsa Kachahri) P.S. Case No. 329 of 2025, 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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