

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.61508 of 2024

Arising Out of PS. Case No.-265 Year-2024 Thana- SHAHPUR PATORI District- Samastipur

1. Bharat Chaudhary S/o- Late Rameshwar Chaudhary Village- Basahiya Shiura PS- Shahpur Patory District- Samastipur
2. Munna Chaudhary son of Bharat Chaudhary Village- Basahiya Shiura PS- Shahpur Patory District- Samastipur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Deepak Kumar Singh, Advocate

For the Opposite Party/s : Mr. Sanjay Kumar Tiwary, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

3 18-01-2025 Heard Mr. Deepak Kumar Singh, learned counsel
for the petitioners and Mr. Sanjay Kumar Tiwary, learned
Additional Public Prosecutor for the State.

2. The petitioners are apprehending their arrest connection with Shahpur Patory P.S. Case No. 265 of 2024, F.I.R. dated 06.07.2024 registered for the offences punishable under Section 30(a) of the Bihar Prohibition & Excise Amendment Act, 2022.

3. Recovery is of 30 liters of country made 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. it appears that nothing has been recovered from the conscious possession of the petitioners rather recovery has been made from the house of petitioner no. 1 and the alleged recovery has been made from the joint house of the property and the petitioners are not the exclusive owner of the house in question and on that basis petitioner no. 2 who is the son of the petitioner no. 1 has also 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 that nothing has been recovered from conscious possession of the petitioners and the petitioners are not the exclusive owner of the house in question, 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 (Excise)-2, Samastipur in connection with Shahpur Patory PS. Case No. 265 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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