

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.68736 of 2024

Arising Out of PS. Case No.-14 Year-2024 Thana- NAUHATTA District- Saharsa

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1. Deepak Yadav Son of Sakaldev Yadav R/O Vill.- Sattaur, Ward no. 09, P.S.- Nauhatta, Dist.- Saharasa.
 2. Kewal Yadav Son of Sakaldev Yadav R/O Vill.- Sattaur, Ward no. 09, P.S.- Nauhatta, Dist.- Saharasa.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Pramod Mishra, Advocate
For the Opposite Party/s : Mr. Narsingh Tanti, APP

CORAM: HONOURABLE MR. JUSTICE RAJESH KUMAR VERMA
ORAL ORDER

3 22-01-2025 Heard Mr. Pramod Mishra, learned counsel for the petitioners and Mr. Narsingh Tanti, learned Additional Public Prosecutor for the State.

2. The petitioners are apprehending their arrest connection with Nawhatta P.S. Case No. 14 of 2024, F.I.R. dated 13.02.2024 registered for the offences punishable under Sections 30(a) of the Bihar Prohibition and Excise Act, 2016.

3. Recovery is of 170 litres of illicit *cough syrup*.

4. Learned counsel for the petitioner submits that the petitioners are innocent and they have falsely been implicated in the present case on the basis of disclosure made by local choukidar. 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 near the house of co-accused namely Chitradev Yadav. 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. Apart from that the Laboratory report suggests that the recovered articles confirms under the prescribed limit.

6. 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 the petitioner no. 1 carries one more case other than the present in which he is on bail and petitioner no. 2 carries two more cases other than the present one in which he is on bail in one case.

7. 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.

8. Considering the aforesaid facts that nothing has been recovered from conscious possession of the petitioners, 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 Exclusive Special Judge Excise, Saharsa in connection with Nawhatta PS. Case No. 14 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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