

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.38616 of 2019

Arising Out of PS. Case No.-35 Year-2018 Thana- NADI NAINAHA District-
West Champaran

- =====
1. SADHU YADAV @ BINOD YADAV, aged about 25 years, male, Son of Lalan Yadav Resident of Village - Madarwa Bhuja Tola, P.S.- Nadi, District- West Champaran at present Chandi Asthan, P.S.- Bagaha, District- West Champaran
 2. Baidyanath Yadav @ Baijnath Yadav, aged about 46 years, male, Son of Nagina Yadav Resident of Village - Madarwa (Reta), P.S.- Nadi, District- West Champaran. At present Din Dayal Nagar, P.S.- Bagaha, District- West Champaran
 3. Mohan Chaudhary, aged about 35 years, male, Son of Ramji Chaudhary Resident of Village - Balua (Tadi Tola) Ward No. 04, P.S.- Nadi, District- West Champaran. At present Din Dayal Nagar, P.S.- Bagaha, District- West Champaran
 4. Ramesh Yadav, aged about 35 years, male, Son of Mangal Yadav @ Kamlesh Yadav Resident of Village - Chandi Asthan, P.S.- Bagaha, District- West Champaran
 5. Lalbabu Yadav, aged about 25 years, male, Son of Mishri Yadav Resident of Village - Chandi Asthan, P.S.- Bagaha, District- West Champaran
 6. Umesh Yadav, aged about 30 years, male, Son of Late Agalu Yadav @ Agai Yadav Resident of Village - Chandi Asthan, P.S.- Bagaha, District- West Champaran

... .. Petitioners

Versus

The State of Bihar

... .. Opposite Party

=====

Appearance :

For the Petitioners : Mr. Brij Kishor Mishra, Advocate.
For the Opposite Party: APP

=====

CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL ORDER

2 01-07-2019 Learned counsel for the petitioner states that the petitioner no. 6 has been arrested and as such the anticipatory bail petition has become infructuous and seeks permission to withdraw the same.

2. Permission is accorded. The anticipatory bail petition of petitioner no. 6 stands dismissed as withdrawn.



3. Heard learned counsel for the petitioners and learned APP for the State.

4. The petitioner nos. 1, 2, 3, 4 and 5 apprehend their arrest for the offences alleged under Sections 420, 467, 468/34 IPC and 30(a) of the Bihar Prohibition and Excise Act, 2016 as amended in 2018 (hereinafter referred to as 'the Prohibition Act, 2016') registered in connection with Nadi P.S. Case No. 35 of 2018.

5. At the very outset, this Court takes note of an order passed by a co-ordinate Bench of this Court in *Ashok Sahani Vs. The State of Bihar, 2017(3) PLJR 632*. After a detailed deliberation over the effect of Section 76(2) of the Prohibition Act, 2016, it was categorically opined in paragraph-14 that the privilege of pre-arrest bail under Section 438 of the Cr. P.C. is not available to person accused of having committed an offence under the Prohibition Act, 2016. Certain guidelines (not exhaustive) were also laid out in paragraph-30, indicating circumstances where bail should normally be granted to the accused persons on their production by the police or on their surrender. The Registrar General was also directed to ensure that stamp reporters would not place applications filed under Section 438 of the Cr. P.C. arising out of the cases under the Prohibition, Act, 2016 before the Bench as defect free cases henceforth.

6. The aforesaid order in Ashok Sahani's case (supra) came to be considered of another co-ordinate Bench of this Court passed in *Cr. Misc. No. 21578 of 2017 (Manish Kumar @ Lokesh Kumar Vs. The State of Bihar)* which, by order dated 10.08.2017, held the earlier judgment per *incuriam*, apart from holding the provisions of Section 76(2) of the Prohibition Act, 2016 as void in view of Article 254 of the Constitution of India. The question whether the Registry could be restrained from entertaining anticipatory bail petitions as directed in Ashok Sahani's case



(supra), was referred to a larger Bench.

7. By another judgment dated 03.10.2017 passed by a third co-ordinate Bench of this Court in *Cr. Misc. No. 42985 of 2017 (Barun Kumar Vs. The State of Bihar)*, the issue relating to maintainability of anticipatory bail petitions in respect of offences under the Prohibition Act, 2016 came to be considered yet again. The decision in Manish Kumar's case (*supra*) was found to have been passed in oversight of the relevant provisions of the Constitution of India as well as Section 4 of the Cr. P.C. which could not be placed before it. As such the decision in Ashok Sahani's case (*supra*) was held to be binding on a co-ordinate Bench wherein it had been held that an anticipatory bail petition under Section 438 of the Cr. P.C. cannot be maintained in cases of offences arising out of the Prohibition Act, 2016.

8. The reference to the Larger Bench in *Cr. Misc. No. 21578 of 2017 (Manish Kumar @ Lokesh Kumar Vs. The State of Bihar)* was answered by the Division Bench in its order dated 06.11.2017 since reported in *2017(4) BLJ PHC-288*, opining that the Registry could not be restrained from entertaining anticipatory bail petition in compliance of the order passed in Ashok Sahani's case (*supra*). However, in paragraph-9 of the said order, it was specifically stated that the aspect of the vires/validity/repugnancy of Section 76(2) was not being considered as the same was already sub-judice before the Apex Court. The principles noticed by an earlier Division Bench in *Bisheshwar Mishra Vs. The State of Bihar, 2016 (4) PLJR 1058* in the context of a similar bar to grant of anticipatory bail under the provisions of SC/ST Act in the light of the Apex Court's decision in *Vilas Pandurang Pawar Vs. State of Maharashtra, (2012) 8 SCC 795* were taken note of in paragraph-13, which cast a duty upon the Court considering the pre-arrest bail of an accused, to look into the allegations made in the F.I.R./complaint to find out



whether ingredients of the offence under the SC/ST Act were prima facie made out or not before exercising its judicial discretion under Section 438 of the Cr. P.C. It was therefore held that the law regarding consideration of an application under Section 438 of the Cr. P.C. for grant of pre-arrest bail to the accused under an Act where there is a bar to grant of anticipatory bail, had been settled as such.

9. In a recent development, an order dated 19.12.2018 was passed by a Single Bench of this Court in Cr. Misc. No. 69522 of 2018 (*Suresh Singh and Anr. vs. State of Bihar*) rejecting the prayer for anticipatory bail as not maintainable in view of Section 76(2) of the Prohibition Act, 2016. The said order was assailed before the Hon'ble Supreme Court giving rise to Special Leave to Appeal (Criminal) No. 2581 of 2019 which came to be disposed of on 26.03.2019, inter alia, with the following observations--

“We are not inclined to interfere with this Special Leave Petition.

The Special Leave Petition is dismissed with liberty to the petitioner to pursue remedy of regular bail, if so advised. The same be filed within two weeks' from today.”

10. Learned counsel for the petitioner nos. 1, 2, 3, 4 and 5 has also not shown that any material change on the question of maintainability has come about as a result of the recent judgment dated 17.05.2019 of a Full Bench of this Court in Cr. Appeal (SJ) No. 431 of 2019 (*Ram Vinay Yadav vs. The State of Bihar*).

11. Further, learned counsel for the petitioner nos. 1, 2, 3, 4 and 5 has not been able to satisfy this Court that looking to the allegations made in the F.I.R., the ingredients of the offences alleged against the petitioner nos. 1, 2, 3, 4 and 5 have not been



made out.

12. In view of the above, this Court has no hesitation in holding that the anticipatory bail petition in respect of offences alleged against the petitioner nos. 1, 2, 3, 4 and 5 under the Prohibition Act, 2016 is not maintainable.

13. The anticipatory bail petition of petitioner nos. 1, 2, 3, 4 and 5 accordingly stands dismissed.

14. Considering the submission of the petitioners that similarly situated co-accused persons have been granted anticipatory bail, if the petitioner nos. 1, 2, 3, 4 and 5 surrender and seek regular bail before the learned Court below the same shall be considered on its own merit in accordance with law, without being prejudiced by any observation in the present order.

(Vikash Jain, J)

Ibrar//-

U		T	
---	--	---	--

