

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.41999 of 2019**

Arising Out of PS. Case No.-86 Year-2019 Thana- BATHNAHA District-
Sitamarhi

- =====
1. RAMSEVAK SAH, male, aged about 53 years, Son of Late Pahari Sah Resident of Village-Dumaria, P.S.-Bathnaha, District-Sitamarhi.
 2. Vijay Kumar, male, aged about 30 years, Son of Ramsevak Sah Resident of Village-Dumaria, P.S.-Bathnaha, District-Sitamarhi.

... .. Petitioners

Versus

The State of Bihar

... .. Opposite Party

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Appearance :

For the Petitioners : Mr. Dinesh Jha, Advocate
For the Opposite Party: APP

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN
ORAL ORDER

2 10-07-2019 Heard learned counsel for the petitioners and learned
APP for the State.

2. The petitioners apprehend their arrest for the offences alleged under Sections 272, 273/34 of the Indian Penal Code and Section 30(a) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as 'the Prohibition Act') registered in connection with Bathnaha P.S. Case No. 86 of 2019.

3. It is submitted that the petitioners have been falsely implicated and none of the averments in the F.I.R. constitute the ingredients of any offence under the Prohibition Act as concerns the petitioners. There is no material to connect the incriminating goods nor the place of recovery to the petitioners. Moreover, there is contradiction also with regard to the place of recovery which according to the F.I.R. is from a corner of the petitioners' house whereas according to the seizure list forming part of the F.I.R. itself, recovery is said to have been made from by the side of



it.

4. Ordinarily, an anticipatory bail petition in relation to the offence under the Prohibition Act is not maintainable. However, where, on the basis of the statements in the first information report, the ingredients of the offence alleged against a persons are not made out, as observed by a Division Bench of this Court in Cr. Misc. No. 21578 of 2017 (Manish Kumar @ Lokesh Kumar Vs. The State of Bihar) and analogous cases, there would be no bar to the grant of anticipatory bail.

5. Learned APP has not pointed out any material in the F.I.R. alleging any offence to have been committed by the petitioners in order to attract the provisions of the said Prohibition Act.

6. Be that as it may, in the event of the petitioners' arrest or surrender before the court below within six weeks from the date of communication of this order, let the above named petitioners be released on bail on furnishing bail bond of Rs.10,000/- (ten thousand) each with two sureties of like amount each to the satisfaction of learned Additional District & Sessions Judge-II cum Special Judge, Excise Act, Sitamarhi in connection with Bathnaha P.S. Case No. 86 of 2019, subject to the conditions as laid down under Section 438 (2) Cr.P.C., and also subject to the following further conditions -

(i) That one of the bailors shall be a close relative of the petitioners.

(ii) That the petitioners shall not indulge in any similar offence till conclusion of the trial.

(iii) That the petitioners shall cooperate with the investigation, if not already concluded, and make themselves available as and when so required and in case of failure, the State shall be at liberty to move for cancellation of bail.

(iv) That the petitioners shall remain physically



present in Court on each and every date during trial and in the event of failure on two consecutive dates without sufficient reason, their bail bonds shall be liable to be cancelled by the learned Court concerned.

(Vikash Jain, J)

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