

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.49558 of 2019**

Arising Out of PS. Case No.-246 Year-2019 Thana- ARARIA District- Araria
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1. SHANKAR CHAUHAN @ SHANKAR MANDAL Son of Parmanand Chauhan Resident of Village-Hirdaypur, Police Station-Araria (R.S.), District-Araria.
2. Kama Devi Wife of Shankar Chauhan @ Shankar Mandal Resident of Village-Hirdaypur, Police Station-Araria (R.S.), District-Araria.

... .. Petitioners

Versus

The State of Bihar

... .. Opposite Party

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Appearance :

For the Petitioner : Mr. Mukesh Kumar Rana, Advocate.

For the Opposite Party: APP

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL ORDER

2 08-08-2019 Heard learned counsel for the petitioners and learned

APP for the State.

2. The petitioners apprehend their arrest for the offences alleged under Sections 147, 148, 149, 341, 323, 324, 307, 353 of the Indian Penal Code and Sections 30(a), 38, 41(1) of the Bihar Excise Amendment Act, 2016 (for short 'the Prohibition Act') and Section 27 of the Arms Act registered in connection with Special Case No. 478 of 2019 arising out of Araria P.S. Case No. 246 of 2019.

3. It is submitted that the petitioners have been falsely implicated in connection with recovery of 1.08 litres of English liquor. It is submitted that even on perusal of the F.I.R., no accusation has been made out against the petitioner in order to attract the offence alleged under the Prohibition Act. The alleged recovery of the offending goods is from co-accused Samod Mandal.



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 petitioner in order to attract the provisions of the said Prohibition Act.

6. As regards the accusation under the penal provisions and the Arms Act, it is submitted that the thrust of accusation of firing has been made against co-accused Sanjit Chauhan and Manikchand Mandal, whereas the accusations against as many as 9 named and 100 unknown persons including the petitioner are general and omnibus in nature. There is no injury report on record to corroborate the accusation of assault. The petitioners claim clean antecedents.

7. 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 2nd Additional Sessions cum Special Judge, Araria in connection with Special Case No. 478 of 2019 arising out of Araria P.S. Case No. 246 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 of each of the petitioners shall be their close relatives other than the petitioners herein.



(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 petitioner no. 2 shall be well represented in Court on each and every date during trial except as and when directed by the learned Court to be physically present and petitioner no. 1 shall remain physically present in court on each and every date,, 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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