

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.53816 of 2019**

Arising Out of PS. Case No.-222 Year-2019 Thana- CHHATAUNI District-
East Champaran

- =====
1. DHARMENDRA SINGH, aged about 29 years, male, Son of Laxmi Singh Resident of Village - Pakarihari, P.S.- Dhaka, Distt - East Champaran.
 2. Mala Devi, aged about 30 years, female, Wife of Dharmendra Singh Resident of Village - Pakarihari, P.S.- Dhaka, Distt - East Champaran.

... .. Petitioners

Versus

The State of Bihar

... .. Opposite Party

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Appearance :

For the Petitioners : Mr. Rajive Ranjan Singh, Advocate.

For the Opposite Party: APP

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL ORDER

2 27-08-2019 Heard learned counsel for the petitioners and learned
APP for the State.

2. The petitioners apprehend their arrest for the offences alleged under Sections 270, 272, 279, 337, 338 and 34 of the Indian Penal Code and Sections 37(b)(c), 30(a) of the Bihar Prohibition and Excise Act, 2016 (for short 'the Prohibition Act') and later on Section 415 IPC and Sections 32, 35, 38, 41(i) and 48 of the Prohibition Act were added registered in connection with Chhatauni P.S. Case No. 222 of 2019.

3. It is submitted that the petitioners have been falsely implicated in connection with recovery of 173.400 litres of liquor. It is submitted that, on perusal of the F.I.R., only material against the petitioner no. 2 is that she is said to be the registered owner of the tempo from which the recovery of the offending goods was made. There is no allegation whatsoever connecting the petitioner no. 2 with such goods. It is submitted that mere ownership of the tempo does not attract the ingredients of the



offence under the Prohibition Act. The petitioners claim clean antecedents.

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 no. 2 in order to attract the provisions of the said Prohibition Act.

6. Be that as it may, in the event of the petitioner no. 2's arrest or surrender before the court below within six weeks from the date of communication of this order, let the above named petitioner Mala Devi be released on bail on furnishing bail bond of Rs.10,000/- (ten thousand) with two sureties of like amount each to the satisfaction of learned IXth Additional Sessions Judge cum Special Judge, Excise, East Champaran, Motihari in connection with Chhatauni P.S. Case No. 222 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 petitioner.

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

(iii) That the petitioner shall cooperate with the investigation, if not already concluded, and make herself 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 shall be well represented in Court on each and every date during trial except as and when directed by the learned Court below to be physically present, and in the event of failure on two consecutive dates without sufficient reason, her bail bond shall be liable to be cancelled by the learned Court concerned.

7. As regards petitioner no. 1, he is the husband of the petitioner no. 2 and is alleged to have been driving the subject tempo. It has further been alleged that the petitioner no. 1 was transporting liquor to Nepal and worked in tandem with two other persons carrying on business in liquor.

8. This Court has held in numerous cases, having regard to the provisions of Section 76(2) of the Prohibition Act as well as the decisions of this Court in *Ashok Sahani Vs. The State of Bihar, 2017 (3) PLJR 632*; *Manish Kumar @ Lokesh Kumar Vs. The State of Bihar in Cr. Misc. No. 21578 of 2017*; *Barun Kumar Vs. The State of Bihar in Cr. Misc. No. 42985 of 2017*; has already taken the view that the privilege of pre-arrest bail is not available to a person accused of having committed an offence under the Prohibition Act. It is relevant to take note that one such order passed in *Cr. Misc. No. 69522 of 2018 (Suresh Singh and Anr. Vs. State of Bihar)* was assailed before the Hon'ble Supreme Court in *Special Leave to Appeal (Criminal) No. 2581 of 2019* but the same was however not interfered with. As such the petition for anticipatory bail filed on behalf of petitioner no. 1 is held to be not maintainable and is dismissed as such.

(Vikash Jain, J)

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