

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.66443 of 2019**

Arising Out of PS. Case No.-235 Year-2019 Thana- DHAKA District- East
Champaran

- =====
1. SONELAL CHAUDHARY @ SONELAL MAHTO S/o- Gugar Chaudhary R/o Village- Pachpakri, P.S.- Dhaka, District- East Champaran, Motihari.
 2. Lalan Rai S/o- Late Narayan Rai R/o Village- Pachpakri, P.S.- Dhaka, District- East Champaran, Motihari.

... .. Petitioners

Versus

The State of Bihar

... .. Opposite Party

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Appearance :

For the Petitioners : Mr. Ravindra Kumar, Advocate.

For the Opposite Party: Mrs. Shaheen Begum, APP

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CORAM: HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL ORDER

2 05-11-2019 Heard learned counsel for the petitioners and learned
APP for the State.

2. The petitioners apprehend their arrest for the offences alleged under Sections 30(a)/41(2) of the Bihar Prohibition and Excise Act, 2016 as amended in 2018 (for short 'the Prohibition Act') registered in connection with Dhaka (Pachpakri) P.S. Case No. 235 of 2019.

3. It is submitted that the petitioners have been falsely implicated on mere suspicion, except which there is no objective material to connect the petitioners with the alleged occurrence. The arrested co-accused Anuj Chaudhary and Om Prakash Chaudhary have merely stated that the petitioners used to sell *Nepali soufi* wine and following conduit, they also indulged in purchase and sale of *Nepali soufi* wine. However, no accusation whatsoever has been made to connect the petitioners with the seized goods in any manner. Moreover, it is submitted that the



petitioner no. 1 is a *neera* tapper and was made accused in Dhaka (Pachpakri) P.S. Case No. 115 of 2016 under the Prohibition Act but after testing one sample was found to be alcohol free clean water only while the second sample was toddy. It is therefore submitted that no offence under the Prohibition Act whatsoever is made out as concerns the petitioners. The petitioner no. 2 is accused in one prior case of different nature.

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 Special Judge (Excise Act), East Champaran, Motihari, in connection with Dhaka (Pachpakri) P.S. Case No. 235 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 bond shall be liable to be cancelled by the learned Court concerned.

(Vikash Jain, J)

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