

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.45992 of 2021

Arising Out of PS. Case No.-603 Year-2020 Thana- ARARIA District- Araria

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1. ISHMAIL @ KHAWAJA, Son of Ibrahim Resident of Village - Gaiyari, Ward No. 13, P.S. - Araria, District - Araria.
 2. Begum, Wife of Ishmail @ Khawaja Resident of Village - Gaiyari, Ward No. 13, P.S. - Araria, District - Araria.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Sanjay Kumar Sharma

For the Opposite Party/s : Mr. Jay Narayan Thakur

**CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY**

ORAL ORDER

2 26-04-2022 The learned counsel for the petitioners is directed to remove all the defects pointed out by the Stamp Reporter within one month.

The learned counsel for the petitioners seeks permission to withdraw this anticipatory bail application with respect to petitioner no. 1, as he has been arrested during the pendency of this bail petition.

Permission is accorded. The application is accordingly dismissed as withdrawn.

The petitioner no. 2 apprehends her arrest in connection with Special Case No. 595 of 2020, arising out of



Araria P. S. Case No. 603 of 2020, registered for the offences under Section 30(a) of the Bihar Prohibition and Excise Act, 2016.

As per allegation, 114 bottles of cough syrup was recovered from the house of petitioners.

The learned counsel for the petitioners has submitted that the petitioner no. 2, Begum is wife of petitioner no. 1. She has no concern with the alleged syrup. She has been made accused merely because she is wife of petitioner no. 1.

Be that as it may, so far as the maintainability of the bail petition is concerned, Section 76(2) of the Bihar Prohibition and Excise Act, 2016 makes an explicit embargo on entertaining the application under Section 438 of the Cr.P.C.

Since the provision of Section 438 of the Cr.P.C. is not applicable in respect of offences under the Bihar Prohibition and Excise Act, 2016, as such, this anticipatory bail application is disposed of, as not maintainable.

If the petitioner no. 2 surrenders before the court



below and makes a prayer for regular bail, that shall be decided on the same day, without being prejudiced by this order.

The court below may take notice of the fact that the petitioner is a lady and her husband, Ishmail @ Khawaja, who is the main accused, is taken into custody, and bailed her out.

Office shall ensure that all the defects are removed by the petitioner within the stipulated time provided in para 1 hereinabove, failing which the matter shall be brought to the notice of this Court.

(Nawneet Kumar Pandey, J)

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