

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.56937 of 2023

Arising Out of PS. Case No.-194 Year-2023 Thana- KUSHESHWARASTHAN District-
Darbhanga

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1. Indra Kumar Chaudhary @ Vijli Chaudhary S/O Ram Shankar Chaudhary
R/O Village- Sanhauli, P.S- Kusheshwar Asthan, Distt.- Darbhanga.
 2. Prakash Chaudhary S/O Indra Kumar Chaudhary @ Vijli Chaudhary R/O
Village- Sanhauli, P.S- Kusheshwar Asthan, Distt.- Darbhanga.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ganesh Chandra Thakur, Advocate

For the Opposite Party/s : Mr. Rajesh Kumar, APP

CORAM: HONOURABLE MR. JUSTICE HARISH KUMAR

ORAL ORDER

2 30-08-2023 Heard Mr. Ganesh Chandra Thakur, learned counsel

appearing on behalf of the petitioners and the learned Additional

Public Prosecutor for the State.

2. The petitioners are apprehending their arrest in
connection with Kusheshwar Asthan P.S. Case No. 194 of 2023,
registered for the offences punishable under Sections 353, 379
and 504 of the Indian Penal Code and 11/56 of Bihar Minerals
Concession Prevention of Illegal Mining Transportation and
Storage Rules, 2019.

3. It is alleged that the petitioners and their driver with
the help of JCB machine, Tractor and Trolley were found
indulge in removing soil from the government land, for the



purposes of illegal trade of selling earth soil of government land.

4. Learned counsel appearing on behalf of the petitioners submits that the petitioners are neither owner of the JCB machine, which is said to be used for the purposes of excavating the earth soil nor there is any specific allegation against them that they anyhow interfere and objected the Government officials in discharge of their duties. It is further submitted that the very institution of the FIR is *per se* illegal as the police has no power to lodge FIR in a case where there is violation of any of the provisions of Bihar Minerals Concession and Prevention of Illegal Mining, Transportation and Storage Rules, 2019. He next submits that, save and except, the Mahal Chowkidar, there is no independent witness, who have supported the prosecution case and, moreover, the petitioners are men of fair antecedent and they undertake that they will fully co-operate in the investigation or in the proceeding of the Court.

5. On the other hand, learned counsel for the State opposed the pre-arrest bail application.

6. Regard being had to the submissions made on behalf of the parties and considering the fact that the petitioners



are neither the owner of the JCB machine nor there is specific allegation of any overt act, coupled with their fair antecedent, let the petitioners above named be released on bail, in the event of their arrest or surrender before the court below within a period of four weeks from the date of receipt/production of a copy of this order, upon furnishing bail bonds of Rs.10,000/- (ten thousand) each with two sureties of the like amount each to the satisfaction of the learned Sub Divisional Judicial Magistrate, Biroul, Darbhanga in connection with Kusheshwar Asthan P.S. Case No. 194 of 2023, subject to the conditions laid down in Section 438(2) Cr.P.C. with the further condition that one of the bailors shall be the own/close family members of the petitioners.

(Harish Kumar, J)

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