

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.36882 of 2019

Arising Out of PS. Case No.-88 Year-2019 Thana- JOGAPATTI District- West Champaran

1. BAHADUR YADAV Son of Late Indrasan Yadav Resident of Village - Chandraul, P.S.- Nawalpur, District- West Champaran
2. Brajesh Yadav Son of Chhedi Yadav Resident of Village - Chandraul, P.S.- Nawalpur, District- West Champaran

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr.Bimlesh Kumar Pandey
For the State	:	Mr.R.B.Roy 'Raman'

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL ORDER

2 17-06-2019 Learned counsel for the petitioners is permitted to make necessary corrections in paragraphs 6 and 8 of the petition, in course of the day.

Heard learned counsel for the parties.

The petitioners are seeking anticipatory bail under Section 438 of the Code of Criminal Procedure in connection with Yogapatti P.S. Case No. 88 of 2019, registered for the offence under Section 30(a) of Bihar Prohibition and Excise Act, 2016 (for short 'the Act of 2016'), which is barred under Section 76 (2) of the Act of 2016.

It is, however, the submission on behalf of the petitioners that since no offence under the provisions of the Act



of 2016 is made out against these petitioners, bar of application of Section 438 of the Cr. P.C. shall not apply.

As per the case of the prosecution, as narrated in the FIR, the police had received secret information that a huge quantity of illicit liquor was being transported in a Bolero vehicle. For the purpose of verification and necessary action, the police had proceeded to the place, in respect of which they had received information. They noticed one motor-cycle coming from other-side, followed by a Bolero vehicle. It is also alleged that the motorcyclists took an about turn and fled away, on seeing the police party. It is further alleged that the Bolero vehicle stopped instantaneously and the driver of the vehicle managed to flee away. The police are said to have conducted a search, leading to recovery of a huge quantity of illicit liquor from the Bolero vehicle. One occupant of the Bolero vehicle, who could not escape, was apprehended by the police. The person apprehended by the police disclosed the names of these petitioners, who were riding the motor-cycle and who were giving the driver of the Bolero vehicle necessary signal for movement. It also appears from the FIR that when the police inquired from the person arrested regarding destination of illicit liquor, intended to be delivered, the person disclosed that only



the petitioners, who were riding the motor-cycle, would tell in this regard.

Learned counsel for the petitioners has submitted that since no offence under Section 30(a) of the Act of 2016 is made out against these petitioners, who were allegedly riding the motor-cycle, their application for anticipatory bail should be entertained and they should be allowed the said privilege.

I am not convinced with the submissions made on behalf of the petitioners that no offence at all is made out against them.

It is true that the statement of the co-accused before the police has its own limitation so far as its evidentiary value is concerned, it cannot be said at this stage, when investigation is pending, that the petitioner did not have any role in commission of the offence so as to avoid the provision under Section 76(2) of the Act of 2016.

I do not find any merit in this application, which is accordingly dismissed.

However, the petitioners are directed to surrender in the court below within four weeks from today and seek regular bail, if so advised. If they do so, the court below shall consider their prayer for regular bail on its own merit, without being



prejudiced by the rejection of the present anticipatory bail application.

(Chakradhari Sharan Singh, J)

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