

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.48120 of 2019

Arising Out of PS. Case No.-5 Year-2019 Thana- BUXAR MUFFSIL District- Buxar

1. SHYAM BIHARI SINGH Son of Late Ekbal Singh Resident of Village - Nadaon, P.S.- Buxar (M), District- Buxar
2. Hari Bansh Kushwaha Son of Markat Kushwaha Resident of Village - Nadaon, P.S.- Buxar (M), District- Buxar

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Anil Kumar Singh

For the Opposite Party/s : Mr.Vinod Shanker Modi

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

2 02-08-2019 Heard learned counsels for the petitioners and the State.

The petitioners are apprehending arrest in a case registered for the offences punishable under Sections 272 and 273 of the IPC and Section 30(a) of the Bihar Prohibition and Excise Act, 2016.

It is alleged that from the Khalihan of petitioner no. 1, 1036 litres and from the Khalihan of petitioner no.2, 432 litres of Indian Made Foreign Liquor were recovered.

It is submitted by learned counsel for the petitioner that the recovery has been made from an open area, hence, recovery cannot be treated from the conscious physical



possession of the petitioners. A statement has been made in paragraph no.3 of the petition that the petitioners are not having any criminal antecedent.

In view of the provision of non-maintainability of the anticipatory bail under Section 76(2) of the Bihar Prohibition and Excise Act, 2016 and the ratio laid down by the Full Bench of this Court in the case of **Ram Vinay Yadav Vs. State of Bihar** reported in **2019(2) PLJR 1089**, the present anticipatory bail application is not maintainable.

However, in view of the parameters laid down in the case of **Ashok Sahni Vs. State of Bihar** reported in **2017(3) PLJR 632**, let the learned Court below consider the prayer for regular bail of the petitioners preferably on the same day, if they surrender within a period of six weeks in connection with Buxar(M) P.S. Case No. 5 of 2019, pending in the Court of learned ADJ-II-cum-Special Judge, Excise Act, Buxar.

Accordingly, the present application is disposed of.

(Dinesh Kumar Singh, J)

Amrendra/-

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