

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.12645 of 2020

Arising Out of PS. Case No.-444 Year-2019 Thana- BARHARIA District- Siwan

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1. Rishabh Raj @ Rishabh Mishra @ Bishu, Son of Chandrashekhar Mishra @ Upendra Mishra, Resident of Village - Kail Khurd, P.S.- Barharia, District- Siwan
 2. Ibabuddin Hajam @ Munna Son of Safin Ali, Resident of Village - Fajil Tola, P.S.- Barharia, District- Siwan

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s : Mr. Ram Sandesh Roy, Advocate

For the Opposite Party/s : Mr. Umanath Mishra, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL ORDER

3 11-06-2020 Heard learned counsel for the petitioners and
learned counsel for the State via video conferencing.

2. The petitioners have filed the present application for grant of pre-arrest bail in connection with Barharia P.S. Case No.444 of 2019 registered for the offence punishable under Sections 272, 273, 308 read with 34 of the Indian Penal Code and Sections 30(a) and 41(i) of the Bihar Prohibition and Excise Act, 2016 (for short 'the Act of 2016').

3. The Act of 2016 has been promulgated for enforcing, implementing and promoting complete prohibition of liquor and intoxicants in the territory of the State of Bihar and for matters connected therewith or incidental thereto.



4. The legislation was enacted to provide a uniform law relating to prohibition of liquor and intoxicant, levy of duties thereon and punishment for the violation of law in the State of Bihar.

5. Section 76 of the Act of 2016 provides that all the offences under this Act shall be cognizable and non-bailable and provisions of the Code of Criminal Procedure shall apply. Sub clause 2 of Section 76 of Act 2016 bars the application of Section 360 of Code of Criminal Procedure, 1973, Section 438 of Code of Criminal Procedure, 1973 and Probation of Offenders Act, 1958.

6. For the sake of convenience, Section 76 of the Act of 2016 is extracted hereinbelow:-

“76. Offences to be Cognizable and Non-Bailable. - (1) All offences under this Act shall be Cognizable and Non-Bailable and provisions of Code of Criminal Procedure, 1973 (Act 2 of 1974) shall apply. (2) Notwithstanding anything mentioned in sub-section (1) above, nothing in Section 360 of Code of Criminal Procedure, 1973 (Act 2 of 1974), Section 438 of the Code of Criminal Procedure, 1973 (Act 2 of 1974) and Probation of Offenders Act 1958 (20 of 1958) shall apply in relation to any case



involving the arrest of any person on an accusation of having committed an offence under this Act."

7. In **Ram Vinay Yadav vs. The State of Bihar [(2019) 2 PLJR 1089]**, one of the issues referred to the full bench for consideration and adjudication was "whether the provisions of Section 438 Cr.P.C. continue to apply in spite of the bar created under Section 76 (2) of the Bihar Prohibition and Excise Act, 2016 and as to whether such an application under Section 438 Cr.P.C. for anticipatory bail is maintainable"?

8. The Full Bench after having considered the matter held that if the ingredients of the offence under the Act of 2016 are made out, an application for grant of pre-arrest bail would not be maintainable.

9. Regard being had to the statutory provisions prescribed under Section 76 of the Act of 2016, the ratio laid down by the full bench of this Court in **Ram Vinay Yadav (supra)**, since the ingredients of the offence punishable under Sections 30(a) and 41(i) of the Act of 2016 are clearly attracted in the present case as against the petitioners, the application preferred under Section 438 of the Code of Criminal Procedure for grant of pre-arrest bail is not maintainable.

10. Accordingly, it is dismissed as not



maintainable.

11. In case the petitioners surrender and seek bail under Section 439 of the Code of Criminal Procedure, the same should be considered and disposed of on merits without being prejudiced in any manner by this order.

(Ashwani Kumar Singh, J.)

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