

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.21820 of 2020

Arising Out of P.S. Case No.-28 Year-2020 Thana-Bishwambharpur District-Gopalganj

1. Munna Yadav, aged about- 40 years, male, son of Brijraj Yadav
2. Dinanath Yadav, aged about 42 years, male, son of Raghunath Yadav.
3. Bhim Yadav, aged about-35 years, male, son of Raghunath Yadav
- All are resident of village- Sipaya Khas, Khem Matahiniya, P.S. Vishambharpur, District- Gopalganj.

... .. Petitioners

Versus

The State of Bihar

... .. Opposite Party

Appearance :

For the Petitioners : Mr. Sandeep Kumar, Advocate
Mr. Alok Kumar @ Alok Kumar Shahi, Advocate
Mr. Arvind Kumar, Advocate

For the Opposite Party : Mr. Yogendra Kumar, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL ORDER

2 16-07-2020 Filing through email of the present application has been accepted in view of the out-break of COVID-19 Pandemic and has been posted before me for hearing through video conferencing.

2. The application is apparently not in accordance with the provisions prescribed under the Patna High Court Rules, which do not contemplate filing of application through email. In spite of that, considering the extra-ordinary



situation, filing of the present application has been allowed through email.

3. Considering the situation prevailing, the Court has considered, for the present, to ignore the deficiency in filing of the application.

4. Heard learned counsel for the petitioners and learned counsel for the State.

5. The petitioners have filed the present application for grant of pre-arrest bail in connection with Bishwambharpur P.S. Case No. 28 of 2020 registered for the offence punishable under Sections 30(a) and 30(b) of the Bihar Prohibition and Excise (Amendment) Act, 2018.

6. The Bihar Prohibition and Excise Act, 2016 (for short '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.

7. 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.

8. 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.

9. 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.”

10. **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”?

11. 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.

12. 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 30(b) 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.

13. Accordingly, it is dismissed as not maintainable.

14. 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.



15. Since, there is a State wide lockdown, the Court has considered it appropriate to adopt the following procedure for communication of the present order :-

- (i) The order, which has been dictated during the course of proceeding of the virtual court, shall be communicated to me on my email by the Secretary.
- (ii) The corrected copy of the order shall be transmitted by me from my email id to the Secretary, which shall be treated to be an authentic copy of the order passed by this Court in the present proceeding.
- (iii) Hard copy of the order duly signed by me shall be preserved in my residential office for documentation and future use, if any.
- (iv) Let a copy of the order be sent to Mr. Alok Kumar @ Alok Kumar Shahi, learned counsel for the petitioners also on his email.
- (v) Let steps be taken by the Secretary for up-loading of the present order without compromising with the norms of social distancing.

(Ashwani Kumar Singh, J)

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