

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 25139 of 2020

Arising Out of PS. Case No.-582 Year-2019 Thana- MAHUA District- Vaishali

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1. Dharmendra Rai S/o Ram Chandra Ray Resident of Village-Saraypur-Terahrasia, P.S.-Raghopur, District-Vaishali at Hajipur.
 2. Sushil Rai @ Sushil Kumar S/o Late Prem Rai Resident of Rajapakar, P.S.-Rajapakar, District-Vaishali.

... .. Petitioners

Versus

The State of Bihar

... .. Opposite Party

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Appearance :

For the Petitioner/s : Mr. Shubhesh Pandey, Adv.
For the Opposite Party/s : Mr. Mukesh Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL ORDER

- 2 06-11-2020 1. Heard learned counsel for the petitioners and learned counsel for the State.
2. The petitioners have filed the present application for grant of pre-arrest bail in connection with Mahua P.S. Case No. 582 of 2019 registered for the offences punishable under Sections 272 and 273 of the Indian Penal Code and Sections 30(a), 32(ii), 38(ii) and 41(i) of the Bihar Prohibition & Excise Act, 2018.
3. The Bihar Prohibition and Excise Act, 2016 (for short “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 subsection (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 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, the same shall be considered and disposed of on its own merit without being prejudiced in any manner by this order.

12. Since the court proceedings are being conducted through virtual mode and normal court functioning has not been restored till date, it is considered 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 e-mail by the Sr. Secretary.
- (ii) The corrected copy of the order shall be transmitted by me from my e-mail id to the Sr. 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 steps be taken by the Sr. Secretary/registry for up-loading of the present order without compromising with the norms of social distancing.

(Ashwani Kumar Singh, J)

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