

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.5821 of 2022

Arising Out of PS. Case No.-461 Year-2021 Thana- GARDANIBAG District- Patna

1. MUKESH KUMAR @ MUKESH KUMAR GUPTA S/o Late Asharfi Prasad, R/o Punjabi Colony, P.S. Gardanibag, District - Patna.
2. Rajeev Kumar @ Rajeev Kumar Gupta S/o Late Asharfi Prasad, R/o Punjabi Colony, P.S. Gardanibag, District - Patna.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Sujeet Kumar Gupta

For the Opposite Party/s : Mr.Md. Anbzarul Haque Sahara

CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY

ORAL ORDER

2 24-08-2022 The learned counsel for the petitioners is directed to remove all the defects pointed out by the office within one month.

Heard the learned counsel for the petitioners as well as the learned Additional Public Prosecutor for the State.

The petitioners apprehend their arrest in connection with Gardanibag P.S. Case No. 461 of 2021 registered for the offence punishable under sections 30 (a)/36 of the Bihar Prohibition and Excise Act, 2018.

The learned counsel for the petitioners has submitted that nothing was recovered from the possession of the petitioners, but one bottle of liquor was recovered from the roof of co-accused Rishi Kumar. Petitioners are the persons of clean antecedents.

Be that as it may, Section 76 (2) of the Bihar Prohibition



and Excise Act, 2016 makes an explicit embargo on entertaining the application under Section 438 of the Cr.P.C.

Since the provision of Section 438 of the Cr.P.C. is not applicable in respect of offences under the Bihar Prohibition and Excise Act, 2016, as such, this anticipatory bail application is not maintainable.

If the petitioners surrender before the court below and make a prayer for regular bail, it shall be disposed of on the same day without being prejudiced by this order. The learned court below may take notice of the fact that nothing was recovered from the possession of the petitioners and they are the persons of clean antecedents.

With these observations, this criminal miscellaneous petition is disposed of.

Office shall ensure that all defects are removed by the petitioners within the stipulated time mentioned hereinabove, failing which, the matter shall be brought to the notice of this Court.

(Nawneet Kumar Pandey, J)

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