

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.25057 of 2022

Arising Out of PS. Case No.-26 Year-2022 Thana- KURSAKANTA District- Araria

1. AMAN KUMAR Son of Bhavin Kumar Sharma @ Bhaween Sharma
Resident of Village - Balua, Ward No.- 10, P.S.- Simraha, District - Araria.
2. Bhaween Sharma @ Bhavin Kumar Sharma Son of Narayan Sharma
Resident of Village - Balua, Ward No.- 10, P.S.- Simraha, District - Araria.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Mrigendra Kumar

For the Opposite Party/s : Mr.Arvind Kumar Pandey (App 84)

**CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY**

ORAL ORDER

2 14-10-2022 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 through video conferencing.

At the very outset, the learned counsel for the petitioners has submitted that during the pendency of this criminal miscellaneous petition, petitioner no. 2, Bhaween Sharam has been arrested, as such, this criminal miscellaneous petition has become infructuous with respect to petitioner no. 2. He therefore, seeks permission to withdraw this petition with



respect to petitioner no. 2.

In view of above submission, this criminal miscellaneous petition is dismissed as withdrawn with respect to petitioner no. 2.

So far as petitioner no. 1 is concerned, he apprehends his arrest in connection with Kursakanta P.S. Case No. 26 of 2022 registered for the offence punishable under section 30 (a) of the Bihar Prohibition and Excise Act, 2016.

The learned counsel for the petitioners has submitted that the petitioner is a person of clean antecedent. Nothing was recovered from his possession. He was not arrested at the spot and he has falsely been implicated merely because he is owner of the motorcycle wherefrom seven litres of liquor have been recovered.

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 petitioner surrenders before the court below and makes a prayer for regular bail, that 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 the petitioner is a person of clean antecedent and nothing was recovered from his possession.

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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