

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.45165 of 2021

Arising Out of PS. Case No.-62 Year-2021 Thana- ARA MUFFSIL District- Bhojpur

1. PAPPU KUMAR Son of Ramanuj Prasad, Resident of Village- Pipariyah, P.S.- Ara (M), District- Bhojpur.
2. Krishna Yadav S/o Ramayan Yadav, Resident of Village- Hassanpura, P.S.- Ara (M), District- Bhojpur.

... .. Petitioner/s

Versus

The State of Bihar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Rajani Ranjan Pd. Singh

For the Opposite Party/s : Mr.Syed Mojibur Rahman

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

ORAL ORDER

3 12-04-2022 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
Additional Public Prosecutor for the State.

The petitioners apprehend their arrest in connection with Excise Case No. 542 of 2021, arising out of Ara (M) P.S. Case No. 62 of 2021 registered for the offence punishable under section 30 (a) of the Bihar Prohibition and Excise Act.

As per allegation, 30 litres of country-made liquor was recovered from a motor cycle. Two accused persons became successful in fleeing away, whereas co-accused Sanjeev Kumar



was apprehended and he disclosed the name of the petitioners.

The learned counsel for the petitioners has submitted that the name of the petitioners have been figured in confessional statement of co-accused Sanjeev Kumar. He has submitted further that nothing was recovered from the possession of the petitioners, even they are not owner of the motor vehicle from where the alleged liquor was recovered.

By filing a supplementary affidavit, it has been mentioned that the petitioners are the persons of clean antecedents.

So far as the maintainability of the bail petition is concerned, 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. Accordingly, it is dismissed with the observation that if the petitioners surrender before the court below and make a prayer for regular bail that shall be disposed of on the same day considering the fact that nothing was recovered from the possession of the petitioners, even they are



not owner of the motor cycle and they are the persons of clean
antecedents

(Nawneet Kumar Pandey, J)

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