

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.45944 of 2021

Arising Out of PS. Case No.-30 Year-2021 Thana- RAJEPUR District- East Champaran

1. Amit Kumar Yadav, aged about 28 years, Male Son of Rameshwar Ray.
2. Santosh Kumar Rai @ Santosh Kumar, aged about 35 years, Male Son of Rameshwar Ray.
Both resident of Village - Saraiya, P.S. - Rajepur, District - East Champaran.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Binod Kumar Mishra, Advocate

For the Opposite Party/s : Mr. Nitya Nand Tiwary, APP

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

ORAL ORDER

2 15-04-2022 The matter has been taken up through video conferencing.

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 Mr. Nitya Nand Tiwary, the learned Additional Public Prosecutor for the State.

The petitioners apprehend their arrest in connection with Rajepur P.S. Case No. 30 of 2021 registered for offence punishable under Sections 272 and 273 of the Indian Penal Code and Section 30(a) of the Bihar Prohibition and Excise Act, 2016.



As per allegation, when the police party reached the place of occurrence, three persons became successful to flee away and one of them was apprehended, who disclosed his name as Kaushal Rai from whose house 9.510 liters of liquor was recovered. He disclosed the name of petitioners in his confessional statement.

Learned counsel for the petitioners has submitted that the petitioners are innocent and they were not arrested at the spot. He has submitted further that they are the persons of clean antecedents and their names have figured only on the confessional statement of co-accused Kaushal Rai. He has also submitted that there was a panchayati to resolve the dispute between co-accused Kaushal Rai and some persons of the village who belong to Paswan caste. The father of the petitioners was one of the Panchas of that Panchayati due to that enmity, the petitioners have been named by co-accused Kaushal Rai.

Be that as it may, Section 76 (2) of the Bihar Prohibition and Excise Act, 2016 makes an explicit embargo of applicability of Section 438 of the Cr.P.C., which is not applicable in respect of offences under the Bihar Prohibition and Excise Act, 2016, as such, this anticipatory bail application is dismissed as not maintainable.



It is observed further that if the petitioners surrender before the Court below and make a prayer for regular bail, their regular bail petition shall be disposed of on the same day on its own merits the learned lower Court may take notice of the fact that the petitioners are persons of their names have figured only on the confessional statement of co-accused Kaushal Rai.

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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