

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 45962 of 2021

Arising Out of PS. Case No.-899 Year-2020 Thana- SONEPUR District- Saran

1. Manish Kumar Mahto, aged about 42 years old, Male Son of Madan Mahto.
2. Pulish Mahto, aged about 37 years old, Male Son of Madan Mahto.
3. Rajesh Mahto, aged about 48 years old, Male Son of Harkeshwar Mahto.
4. Dharmendra Mahto @ Dahrmdendra Kumar, aged about 42 years Old, Male Son of Sachitanand Rai.
5. Shambhu Rai, aged about 38 years Old, Male Son of Dev Raj Rai.
All Resident of village- Chitarsenpur, P.S.- Sonapur, District- Saran @ Chapra.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Prabhakar Singh, Advocate
For the Opposite Party/s : Mr. Shailendra Kumar, 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.

At the outset, learned counsel for the petitioners have submitted that during the pendency of this anticipatory bail application, petitioner no. 1 has been arrested and, as such, the same has become infructuous. He, therefore, seeks permission to withdraw the application as against petitioner no. 1.

In view of the aforesaid submissions, the application



is dismissed as withdrawn as having become infructuous as against petitioner no. 1.

Heard the learned counsel for the petitioner nos. 2 to 5 as well as Mr. Shailendra Kumar, learned Additional Public Prosecutor for the State.

The petitioner nos. 2 to 5 apprehend their arrest in connection with Sonepur P.S. Case No. 899 of 2020 registered for offence punishable under Sections 272 and 273 of the Indian Penal Code and Section 30(a), 38, 40(i) of the Bihar Prohibition and Excise Act, 2016.

As per the allegation, 10 liters of country made liquor was recovered from the house of co-accused Mohan Mahto.

Learned counsel for the petitioner nos. 2 to 5 has submitted that the alleged liquor was not recovered from the house of the petitioner nos. 2 to 5, rather it was recovered from the house of co-accused Mohan Mahto.

The only allegation as per FIR is that the petitioner nos. 2 to 5 were also assisting Mohan Mahto in manufacturing the liquor. He has submitted further that the petitioner nos. 2 to 5 are persons of clean antecedents.

On the other hand, learned APP for the State has opposed the prayer of bail.



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 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.

If the petitioner nos 2 to 5 surrender before the Court below and make a prayer for bail, their petition for bail shall be disposed of on its own merits on the same day without being prejudiced by this order. At the time of hearing of the bail petition, the learned Court below may take notice of the fact that nothing was recovered from the possession/house of the petitioner nos. 2 to 5, rather ten liters of liquor was recovered from the house of Mohan Mahto.

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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