

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.36975 of 2022**

Arising Out of PS. Case No.-152 Year-2021 Thana- CHORAUT District- Sitamarhi

1. MD. SHAHABUDDIN SON OF LATE MD. AMEEN RESIDENT OF VILLAGE- WARD NO. 07, PAKTOLA, P.O.- RADHI, P.S.- NANPUR, DISTRICT- SITAMARHI
2. MUKESH KUMAR @ MUKESH KUMAR MANDAL SON OF RAMVRIKSH MANDAL RESIDENT OF SAURIYA, P.O.- RADHI, BUZURG, P.S.- NANPUR, DISTRICT- SITAMARHI
3. RAJESH MAHATO SON OF RAMRATAN MAHATO RESIDENT OF WARD NO. 02, SAURIYA BUZURG, P.S.- NANPUR, DISTRICT- SITAMARHI
4. KHALIUZZAMA @ KHALID AHAMAD SON OF ZAKIR HUSAIN RESIDENT OF SAURIYA BUZURG, WARD NO. 3, P.S.- NANPUR, DISTRICT- SITAMARHI

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

**Appearance :**

For the Petitioner/s : Mr.Ayush Kumar

For the Opposite Party/s : Mr.Mithlesh Kumar Khare

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

ORAL ORDER

2      09-09-2022                      The learned counsel for the petitioners is directed to remove all the defects pointed out by the Stamp Reporter within one month.

Heard the learned counsel for the petitioners and learned APP for the State through video conferencing.

Learned counsel for the petitioners has submitted that petitioner no.1 has been arrested during the pendency of the anticipatory bail application and, as such, the same has become



infructuous. He, therefore, seeks permission to withdraw the application as against petitioner no.1.

Permission is accorded. The application is accordingly **dismissed as withdrawn as having become infructuous as against petitioner no.1.**

Petitioner nos. 2, 3 and 4 apprehend their arrest for the offences alleged under Sections 30(a) and 37(b) of the Bihar Prohibition and Excise Act, 2016, registered in connection with Choraut P.S.Case No. 152 of 2021.

Learned counsel for the petitioners has submitted that they are neither the owner nor the driver of the Scorpio wherefrom 0.555ml liquor was recovered. Their names have figured in the confessional statement of co-accused. Petitioners are persons of clean antecedent.

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. hence it is not maintainable.

If petitioner nos. 2, 3 and 4 surrender and seek regular bail before the court below, that shall be disposed of on its own merit 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 their possession and they are persons of clean antecedent.

With these observations, the application stands disposed of.

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

**(Nawneet Kumar Pandey, J)**

HR/-

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