

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.40160 of 2022

Arising Out of PS. Case No.-51 Year-2022 Thana- BARURAJ District- Muzaffarpur

1. YUGUL KISHORE SAHNI S/o Raj Kishore Sahni R/o village- Chorghatta, P.S.- Baruraj Muzaffarpur, Bihar- 843111
2. Shyam Babu Sahni S/o Rampukar Sahni R/o village- Chorghatta, P.S.- Baruraj Muzaffarpur, Bihar- 843111

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Dhananjay Kumar

For the Opposite Party/s : Mr.Bal Mukund Prasad Sinha

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

ORAL ORDER

2 28-09-2022 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.

The petitioners apprehend their arrest in connection with Baruraj P.S. Case No. 51 of 2022 registered for the offence punishable under sections 147, 148, 149, 188, 341, 342, 323, 307, 332, 333, 353, 414, 427, 504, 506 of the Indian Penal Code and 30 (A), 37 (B), 37 (c), 45 and 52 of the Bihar Prohibition and Excise Act, 2016.

The informant is S.H.O. of Baruraj police station.



As per allegation, the learned counsel for the petitioners has submitted that the petitioners were consuming liquor at their *door*. When the police party reached there, they attempted to flee away, but they were apprehend by the police. On search, 360 ml of illicit foreign liquor was recovered from a motor cycle parked in *dalan* of petitioner no. 1. The relatives of the accused persons and villagers assembled there and they forcibly rescued the petitioners from clutches of the police. The names of 24 persons, who rescued the petitioners, have been mentioned in the FIR.

The learned counsel for the petitioners has submitted that petitioner no. 1 is a Government Teacher. He has submitted further that the police has forcibly implicated the petitioners in this case. As a matter of fact, the police personnel after entering into the house of the petitioners badly assaulted them and in this respect, the wife of petitioner no. 1 has lodged Complaint Case No. 321 of 2022 against the police personnel.

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 petitioners surrender before the court below and make 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 note of the fact that the petitioners are not involved in any other matters relating to Excise Act.

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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