

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.49204 of 2022

Arising Out of PS. Case No.-244 Year-2022 Thana- BARHARA District- Bhojpur

1. AKSHAY KUMAR @ BHOLA S/O VIJAY RAM Resident of village- Jokhari, P.S.- Barhara (Krishanagadh O.P.), District- Bhojpur.
2. SANJAY PASWAN @ SANJAY KUMAR PASWAN S/O LATE RAJ GRIHI PASWAN Resident of village- Jokhari, P.S.- Barhara (Krishanagadh O.P.), District- Bhojpur.
3. MANJAY PASWAN @ MAJAY PASWAN S/O LATE RAJ GRIHI PASWAN @ GIRAH PASWAN Resident of village- Jokhari, P.S.- Barhara (Krishanagadh O.P.), District- Bhojpur.
4. SAJAN PASWAN S/O LATE DEV LAL PASWAN Resident of village- Jokhari, P.S.- Barhara (Krishanagadh O.P.), District- Bhojpur.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Anil Kumar
For the Opposite Party/s : Mr.Umanath Mishra

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

ORAL ORDER

2 21-10-2022 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 through video conferencing.

At the very outset, the learned counsel for the petitioners has submitted that during the pendency of this criminal miscellaneous petition, petitioner no. 1 has been



arrested, as such, this criminal miscellaneous petition has become infructuous with respect to petitioner no. 1. He therefore, seeks permission to withdraw this petition with respect to petitioner no. 1.

In view of above submission, **this criminal miscellaneous petition is dismissed as withdrawn with respect to petitioner no. 1.**

So far as **rest petitioners are concerned**, they apprehend their arrest in connection with Barhara (Krishanagardh O.P.) registered for the offence punishable under sections 30(a)/36 of the Bihar Prohibition and Excise (Amendment) Act, 2018.

The learned counsel for the petitioners has submitted that the petitioners are the persons of clean antecedents and the alleged liquor was not recovered from their possession, rather it was recovered from the field.

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.

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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