

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.1661 of 2020

Arising Out of PS. Case No.-468 Year-2019 Thana- BAHERA District- Darbhanga

1. RAVINDRA PASWAN Son of Bucci Paswan @ Bucchi Paswan Resident of Village - Jayantipur, P.S.- Bahera, Distt - Darbhanga.
2. Bharath Paswan @ Bharath Paswan Son of Bucci Paswan @ Buchhi Paswan Resident of Village - Jayantipur, P.S.- Bahera, Distt - Darbhanga.
3. Shankar Sahni Son of Vishwanath Sahni @ Padarath Sahani Resident of Village - Jamghatta, P.S.- Bahera, Distt - Darbhanga.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Manish Kumar No.2, Adv.

For the Opposite Party/s : Ms. Rita Verma, APP

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

3 04-03-2020 Since initially it is submitted that petitioner no.3, Shankar Sahni has been arrested, hence, this application so far as it relates to petitioner no.3 stands dismissed as having infructuous.

Heard learned counsel for the petitioners and learned APP for the State.

Petitioner nos. 1 and 2 are apprehending arrest in a case registered for the offences punishable under Sections 30(a), 32(3) and 41(1) of the Bihar Prohibition and Excise Act, 2016, as amended by Amendment Act 8 of 2018 (hereinafter referred to as 'the Act').

The prosecution case as per the written report of Vijay Kumar, A.S.I. of Police submitted before the S.H.O.,



Bahera is to the effect that on 10.11.2019 at about 8.15 A.M., the informant received an information from the S.H.O. that one car met with an accident and fell into the water. Consequently, the informant reached at the spot and found a car overturned into a water channel. In the meantime, the accident was viral in social media and then the local Chaukidar from the post of the social media identified three persons as the petitioners. From the vehicle in question, 3.9 litres of Nepali liquor has been recovered.

It is submitted by learned counsel for the petitioners that the vehicle from which the recovery was made does not belong to the petitioner. A statement to that effect has been made in paragraph no.9 of the petition. Moreover, the seizure has been made by an officer in the rank of A.S.I. who is not authorized to seize under Section 73(e) of the Act. Hence, the recovery cannot be treated to be made from the physical possession of the petitioners. Though petitioner no.1 is accused in one other case in which he is on bail whereas petitioner No.2 is not having any criminal antecedent. A statement to that effect has been made in paragraph no.3 of the petition.

Learned APP for the State submits that the



petitioners were identified by the local Chaukidar on the basis of a video clip wherein they were seen taking out illicit liquor from the vehicle in question.

Considering the fact that actual recovery *prima facie* does not appear to be made from the possession of the petitioners, the seizure of liquor has been made by an officer in the rank of A.S.I. who is not authorized to seize the same under the Act and statement made in paragraph no.9 of the petition that the petitioner no. 1 and 2 have no concern with the vehicle in question, let petitioner nos.1 and 2 above named be released on anticipatory bail, in the event of arrest or surrender before the learned Court below within a period of 12 weeks from today, on furnishing bail bond of Rs.10,000/- (ten thousand) each with two sureties of the like amount each to the satisfaction of the learned ADJ-II-cum-Special Judge (Excise), Darbhanga, in connection with G.O. Case No.1157 of 2019, arising out of Bahera P.S. Case No.468 of 2019, subject to the conditions as laid down under Section 438(2) of the Cr.P.C.

(Dinesh Kumar Singh, J)

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