

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.13173 of 2020

Arising out of PS. Case No.-9 Year-2020 Thana- ANGARGHAT District- Samastipur

1. Shashi Mohan Mishra @ Shashi Mohan @ Shashi Mohan Mishir, aged about 26 years, Male, Son of Vijay Mishra @ Vijay Kumar Mishra, Resident of Village - Vishanpur Samthu, P.S.- Angarghat, Distt - Samastipur.
2. Raushan Mishra @ Rakesh Raushan @ Raushan Mishir, aged about 29 years, Son of Vijay Mishra @ Vijay Kumar Mishra, Resident of Village - Vishanpur Samthu, P.S.- Angarghat, Distt - Samastipur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Karandeep Kumar, Advocate
For the Opposite Party/s : Mr. Nityanand, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 13-10-2020

The matter has been heard *via* video conferencing due to circumstances prevailing on account of the COVID-19 pandemic.

2. Heard Mr. Karandeep Kumar, learned counsel for the petitioners and Mr. Nityanand, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

3. The petitioners apprehend arrest in connection with Angarghat PS Case No. 09 of 2020 dated 29.01.2020, instituted under Section 30(a) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the 'Act').

4. The allegation against the petitioners is that from their house 5.4 litres of whisky in 30 bottles has been recovered.



5. Learned counsel for the petitioners submitted that the recovery is said to be from the house of the petitioners, but they were not present and it was not from the conscious possession. It was further submitted that the witnesses who have signed on the seizure-list do not belong to the locality of the petitioners and, thus, it raises a question with regard to the authenticity of the seizure. It was further submitted that the petitioners have no criminal antecedent.

6. Learned APP submitted that the recovery having been made from the house of the petitioners, clearly offence is made out under the Act and, thus, an application for grant of pre-arrest bail under Section 438 of the Code of Criminal Procedure, 1973 would not be maintainable due to the bar of Section 76(2) of the Act.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds substance in the objection of learned APP with regard to maintainability of the present application.

8. In view thereof, the application stands dismissed as not maintainable.

(Ahsanuddin Amanullah, J)

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