

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.25393 of 2020

Arising Out of PS. Case No.-71 Year-2020 Thana- PIYAR District- Muzaffarpur

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1. Ganesh Rai, aged about 44 years, S/o- Jagdish Rai,
 2. Rajesh Rai @ Rajesh Kumar, aged about 21 Male, S/o Ganesh Rai,
Both are resident of village- Baligana, P.S.- Piar, Dist- Muzaffarpur.
- Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Rakesh Ranjan, Advocate
For the State	:	Mr. Yogendra Kumar Singh, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 05-11-2020

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

2. Heard Mr. Rakesh Ranjan, learned counsel for the petitioners and Mr. Yogendra Kumar Singh, learned Additional Public Prosecutor (hereinafter referred to as the ‘APP’) for the State.

3. The petitioners apprehend arrest in connection with Piar PS Case No. 71 of 2020 dated 18.03.2020, instituted under Sections 272, 273 of the Indian Penal Code and 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 maize field, upon search by the police, 12.780 litres of liquor was recovered.

5. Learned counsel for the petitioners submitted that the petitioners were not at home at the relevant time and that it was not recovered from their house and, rather, from the open maize field and they were not aware what was lying in the field. Learned counsel submitted that the petitioners have been made accused on the basis of suspicion due to political enmity and local politics. Learned counsel submitted that the petitioners have no criminal antecedent.

6. Learned APP submitted that from the FIR itself it is clear that the recovery is from the maize field belonging to the petitioners and it is immaterial whether the petitioners were present in the house or not. It was further contended that the application itself is not maintainable under Section 76(2) of the Act, which does not permit any application seeking pre-arrest bail under Section 438 of the Code of Criminal Procedure, 1973. Thus, it is submitted that once the recovery is from the maize field belonging to the petitioners, there is direct nexus and an offence is *prima facie* made out under 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 contention of learned APP with regard to maintainability of the application.

8. Accordingly, the application stands dismissed as not maintainable.

(Ahsanuddin Amanullah, J)

J. Alam/-

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