

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 24157 of 2021

Arising Out of PS. Case No.-105 Year-2020 Thana- NIMACHANDPURA District- Begusarai

1. Puspak Singh, aged about 26 years.
2. Lalit Singh, aged about 36 years.
Both son of Daya Ram Singh @ Damroo Singh.
3. Daya Ram Singh @ Damroo Singh, Son of Rajo Singh, aged about 57,
Resident of Village- Bandhwar, PS- Nimachandpura, District- Begusarai.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Akash Chaturvedi, Advocate
For the State	:	Mr. Sanjay Kumar, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 21-08-2021

The matter has been heard *via* video conferencing.

2. The case has been taken up out of turn on the basis of motion slip filed by learned counsel for the petitioners on 09.08.2021, which was allowed.

3. Heard Mr. Akash Chaturvedi, learned counsel for the petitioners and Mr. Sanjay Kumar, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

4. The petitioners apprehend arrest in connection with Nimachandpura PS Case No. 105 of 2020 dated 06.12.2020, instituted under Sections 420, 120B of the Indian Penal Code and



30(a) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the 'Act').

5. The allegation against the petitioners is that on information when police reached the spot, from in front of his house a truck laden with liquor and from his house and also from near it, huge quantity of liquor was seized.

6. Learned counsel for the petitioners submitted that as per the FIR and the seizure list, recovery has not been made from the house of the petitioners or from his conscious possession.

7. Learned APP submitted that the recovery has been made from the house of the petitioners as would be clear from the FIR as well as the seizure list and, thus, the present petition under Section 438 of the Code of Criminal Procedure, 1973 would not be maintainable in view of bar of Section 76(2) of the Act.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court would only observe that it is unfortunate that in spite of their being specific allegation in the FIR with regard to recovery of liquor from the house, both in the main body of the FIR and the seizure list, such fact was been controverted and learned counsel for the petitioners had submitted that there is no such allegation.



9. Be that as it may, in view of recovery of liquor being from the house of the petitioners as is specifically written in the FIR as well as the seizure list, the Court finds the contention of learned APP that the present petition would not be maintainable in view of bar of Section 76(2) of the Act, is valid.

10. Accordingly, the petition stands dismissed as not maintainable.

(Ahsanuddin Amanullah, J.)

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