

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.28110 of 2020

Arising Out of PS. Case No.-165 Year-2020 Thana- VAISHALI District- Vaishali

1. Wakil Rai, aged about 35 years (Male), S/o Kallu Rai
2. Mukesh Rai @ Mukesh Kumar Rai, aged about 30 years, (Male), S/o Naresh Rai @ Ramnaresh Ray
Both Resident of Village- Rahimapur, Brahmsthan, P.S. and District- Vaishali.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Arvind Kumar Sinha, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 17-02-2021

The matter has been heard *via* video conferencing.

2. Heard Mr. Arvind Kumar Sinha, learned counsel for the petitioners and Mr. Jharkhandi Upadhyay, learned In-charge Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State as Mr. Akbar Ali, learned APP who is assigned the brief had requested him to assist the Court.

3. The petitioners apprehend arrest in connection with Vaishali PS Case No.165 of 2020 dated 24.05.2020 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 when



the police, on secret information that the petitioners were selling country made liquor and had kept it in a hutment, went there, two persons fled away taking advantage of darkness and upon search of the hutment, 35 litres of country made liquor was recovered.

5. Earlier, a report was called for from the Superintendent of Police, Vaishali, with regard to the ownership of the hut from which recovery of liquor has been effected.

6. Learned counsel for the petitioners submitted that they were not caught at the spot and only on suspicion they have been named. It was further submitted that the recovery is from the place which is common ancestral property of the petitioners and they cannot be said to be the sole owner for the purpose of fixing liability. Learned counsel submitted that the petitioners have no criminal antecedent.

7. Learned APP, on basis of the report of the Superintendent of Police, Vaishali, submitted that the mother and wife of the petitioner no.1, Wakil Rai, as also co-villagers have stated that the hut from which recovery was made belongs to the petitioner no.1. It was submitted that the present petition is, thus, not maintainable in view of bar of Section 76(2) of the Act as recovery is from the hut of the petitioner no. 1 and, thus,



a case under the Act is made out against him.

8. With regard to petitioner no.2, it was submitted that he was also in the business of country made liquor with petitioner no.1.

9. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds substance in the submissions of learned APP that as far as petitioner no.1, Wakil Rai, is concerned, the application is not maintainable in view of bar of Section 76(2) of the Act. Thus, the application, as far as petitioner no.1, Wakil Rai, is concerned, is dismissed as not maintainable.

10. As far as petitioner no.2, Mukesh Rai @ Mukesh Kumar Rai, is concerned, it is not in dispute that he is the cousin of the petitioner and he has inherited the land adjacent to the land inherited by the petitioner no.1 on which the hutment was made. Moreover, in view of there being specific allegation that two persons fled away under the cover of darkness and there was information that the petitioners no.1 and 2 were together doing such business, the Court is not inclined to grant pre-arrest bail to petitioner no.2, Mukesh Rai @ Mukesh Kumar Rai.

11. Accordingly, the application on behalf of Mukesh Rai @ Mukesh Kumar Rai also stands dismissed.



12. However, on the prayer made by learned counsel for the petitioners, the Court would observe that if the petitioners surrender before the Court below, within four weeks from today, and pray for bail, the same shall be considered, on its own merits, in accordance with law, without being prejudiced by the present order.

(Ahsanuddin Amanullah, J)

J. Alam/-

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