

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.32034 of 2020

Arising Out of PS. Case No.-244 Year-2020 Thana- BASANTPUR District- Siwan

1. Mina Devi, aged about 60 years (M), wife of Late Ashok Raut,
2. Shila Devi, aged about 30 years (M), daughter of late Ashok Raut
Both are residents of Village - Lakari Dom Paraw, P.S.- Basantpur (Lakari Naviganj O.P.), District - Siwan.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Bashishtha Narayan Mishra, Advocate
For the State : Mr. Jai Narain Thakur, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 08-03-2021

The matter has been heard *via* video conferencing.

2. Heard Mr. Bashishtha Narayan Mishra, learned counsel for the petitioners and Mr. Jai Narain Thakur, learned Additional Public Prosecutor (hereinafter referred to as the ‘APP’) for the State.

3. The petitioners apprehend arrest in connection with Basantpur (Lakari Naviganj) PS Case No.244 of 2020 dated 19.06.2020, instituted under Sections 272, 273, 308/34 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 courtyard six litres of illicit liquor was recovered.



5. Learned counsel for the petitioners submitted that they are mother and daughter and have no connection with the liquor and further, that the liquor was recovered from outside their house. It was submitted that they have no criminal antecedents.

6. Learned APP raised a preliminary objection and submitted that as the recovery is from the premises of the petitioners, even though not inside the house, an offence is made out under the Act and, thus, the present application under Section 438(2) of the Code of Criminal Procedure, 1973, would not be maintainable as there is bar to the same under 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 the learned APP. Once the recovery is shown to be from the courtyard of the petitioners, even though it may be outside the main house, the bar of Section 76(2) of the Act would come into play and as offence, *prima facie*, is made out under the Act.

8. Accordingly, the application stands disposed off as not maintainable.

9. However, on prayer of learned counsel for the



petitioners, it is observed that if the petitioners appear before the Court below and pray for bail, within four weeks from today, the same shall be considered, on its own merits, in accordance with law, without being prejudiced by the present order, preferably on the same day.

(Ahsanuddin Amanullah, J)

J. Alam/-

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