

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 32079 of 2020**

Arising Out of PS Case No.-61 Year-2020 Thana- LALIT NARAYAN UNIVERSITY
District- Darbhanga

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1. Vinod Kumar Mahto, aged about 45 years, (Male) Son of Yogendra Mahto.
 2. Ram Babu Mahto, aged about 37 years, (Male) Son of Yogendra Mahto.
 3. Shyam Mahto, aged about 35 years, Son of Yogendra Mahto.
All resident of Village/Mohalla - Laxmisagar, Anand Kishori Nagar, Ward
No. 15, PS - L.N.M.U. District - Darbhanga.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Md. Matloob Rab, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 22-03-2021

Heard Mr. Md. Matloob Rab, learned counsel for the petitioners and Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

2. The petitioners apprehend arrest in connection with LNMU PS Case No. 61 of 2020 dated 27.02.2020, instituted under Sections 272/273/353/34 of the Indian Penal Code and 30(a) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the 'Act').



3. The allegation against the petitioners is that from their house 54 litres of liquor was recovered and their father was caught and he had also stated that he was into the business of liquor along with his sons, i.e., the petitioners, who had escaped.

4. Learned counsel for the petitioners submitted that the father was caught and the petitioners were not present at the spot and that under police duress, he was made to confess in which he has taken the name of all his sons. It was submitted that the petitioners are separate in lodging and mess and have their own separate business and have no connection with the recovered liquor and further that they have no criminal antecedent.

5. Learned APP raised a preliminary objection and submitted that the present application is not maintainable due to bar of Section 76(2) of the Act as there has been recovery of liquor from the house of the petitioners which *prima facie* constitutes an offence under the Act.

6. Having considered the facts and circumstances of the case and submission of learned counsel for the parties, the Court finds substance in the contention of learned APP.

7. There being recovery from the house of the petitioners, obviously offence is made out under the Act and the present application is thus, not maintainable.



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

9. However, in view of submission 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 prejudice by the present order.

(Ahsanuddin Amanullah, J.)

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