

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.34708 of 2020

Arising Out of PS. Case No.-14 Year-2020 Thana- VAISHALI District- Vaishali

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1. Vikash Kumar, aged about 23 years, Male, son of Sanjay Rai.
 2. Rakesh Kumar, aged about 21 years, Male, son of Sanjay Rai.
Both are resident of Village - Salempur, P.S. - Lalganj, District- Vaishali.
- Petitioner/s

Versus

The State of Bihar.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Shyameshwar Kumar Singh, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 30-04-2021

The matter has been heard *via* video conferencing.

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

3. The petitioners apprehend arrest in connection with Vaishali PS Case No. 12 of 2020 dated 16.01.2020, 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 they were in the business of manufacturing and selling of liquor in



course of which the police had caught one person and 150 litres of illicit liquor was recovered from their ALTO 800 Car.

5. Learned counsel for the petitioners submitted that they have been falsely implicated. It was submitted that even as per the FIR, there were two persons in the car; one was caught and another managed to run away and the person, who was arrested, had disclosed the name of the petitioners. However, it was submitted that only one person managed to run away and the petitioners cannot be held responsible. It was submitted that the petitioners have no criminal antecedent.

6. On a query of the Court as to the ownership of the vehicle, though the same has not been disclosed in the application, learned counsel submitted that it was in the name of petitioner no. 1.

7. Learned APP submitted that the person, who was caught, has stated that he was the driver employed by the petitioners and that the car was of the petitioners and they were in the business of manufacturing and selling of countrymade liquor. Thus, it was submitted that the petitioners, being full brothers, were together in the business of illicit liquor and, accordingly, the present application 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 finds substance in the contention of learned APP. Once, when, admittedly, the ownership of the car is either jointly of the petitioners or one of them, both being full brothers and further, that the person, who was arrested, having stated that both of them were involved in manufacturing and selling of illicit liquor, *prima facie*, offence is made out under the Act and, thus, the present application would not be maintainable.

9. In view thereof, the application stands disposed off as not maintainable.

(Ahsanuddin Amanullah, J)

J. Alam/-

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