

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.34639 of 2020

Arising Out of PS. Case No.-126 Year-2020 Thana- GORIAKOTHI District- Siwan

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1. Sunil Kumar, aged about 25 years, Gender-Male, son of Shri Bhagwan Chaurasiya, resident of Village- Pipra, Police Station- Gorea Kothi, District- Siwan.
 2. Santosh Kumar aged about 21 years, Gender-Male, son of Sri Bhagwan Chaurasiya, resident of Village- Pipra, Police Station- Gorea Kothi, District- Siwan.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ashok Kumar, Advocate
For the State	:	Mr. Amitesh Kumar, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 28-04-2021

The matter has been heard *via* video conferencing.

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

3. The petitioners apprehend arrest in connection with Gorea Kothi P.S. Case No. 126 of 2020 dated 22.08.2020, instituted under Sections 30(a)/36 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 while patrolling at 1:00 PM reached the place of occurrence, two persons were seen carrying sacks and on seeing



the police they threw the sacks behind a shop and fled away. It is alleged that on search a total of 8.280 litres of liquor was recovered and two independent witnesses signed on the seizure list and the same independent witnesses also recognized the petitioners as the persons who were dealing in liquor and had kept the liquor.

5. Learned counsel for the petitioners submitted that it is unbelievable that two persons would manage to run away at 1:00 P.M when there were five policemen. It was submitted that petitioners have no criminal antecedent and due to village politics and enmity they have been named by the witnesses who had signed the seizure list.

6. Learned APP submitted that it is not a case where the police have stated that on information that petitioners are involved, they raided the area; and rather in the present case the independent witnesses who have signed the seizure list have disclosed the name of the petitioners and thus it cannot be disbelieved, at least at present. Learned APP submitted that in such view of the matter, the present application itself is not maintainable in view of bar of Section 76(2) of the Act which prohibits an application under Section 438(2) of the Code of Criminal Procedure, 1973, if an offence is made out under 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 contention of learned APP. Once the petitioners have been specifically identified by the independent witnesses that they were dealing in liquor and had kept the recovered liquor, the present application would not be maintainable.

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

9. However, in view of the submissions of learned counsel for the petitioners, it is observed that if the petitioners appear before the Court below and seek bail, the same shall be considered on its own merits, in accordance with law, without being prejudiced by the present order.

(Ahsanuddin Amanullah, J.)

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