

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.40295 of 2020

Arising Out of PS. Case No.-101 Year-2020 Thana- AGIAON BAZAR District- Bhojpur

1. Shivam Kumar Singh, aged about 26 years, Male, son of Kamleshwar Singh,
2. Satyam Singh, aged about 30 years, Male, son of Kamleshwar Singh,
3. Kamleshwar Singh, aged about 56 years, son of Late Kesho Singh,
All resident of Village- Karvania, P.S.- Agion Bazar, District- Bhojpur.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Madanjeet Kumar, Advocate

For the State : Mr. Lakshmi Kant Sharma, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 15-04-2021

The matter has been heard *via* video conferencing.

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

3. The petitioners apprehend arrest in connection with Agiaon Bazar PS Case No. 101 of 2020 dated 27.09.2020, 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 prior information that they were smuggling foreign liquor in a vehicle, reached the spot, three persons who



were standing near a Scorpio vehicle, ran away and could not be caught and from the vehicle, 174.9 litres wine was recovered along with Aadhar Card of petitioner no. 1.

5. Learned counsel for the petitioners submitted that there is no connection of the petitioners, either with the seized vehicle or the recovered liquor and they have been falsely implicated due to past enmity with the local Chaukidaar, who has identified them. It was further submitted that the petitioners have no criminal antecedent.

6. Learned APP submitted that there is ample evidence against the petitioners as the petitioners no. 1 and 2 are the sons of the petitioner no. 3 and that the police had definite information about them indulging in smuggling of liquor. It was submitted that it has not been placed by learned counsel for the petitioners that in the FIR itself as well as the seizure list, it is mentioned that the Aadhaar Card of the petitioner no.1 was recovered from the Scorpio. It was submitted that this fact totally establishes that the petitioners, who are father and sons, are connected with the recovered wine as Aadhaar Card of petitioner no. 1 could not otherwise, have been found from the vehicle. Thus, learned counsel submitted that in law, since *prima facie*, offence is made out under the Act, the present



application under Section 438 of the Code of Criminal Procedure, 1973, is not maintainable 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 contention of learned APP. Besides, from the most vital fact that the Aadhaar Card of the petitioner no. 1 was recovered from the vehicle, which learned counsel for the petitioners, though being duty bound to disclose did not do, it is obvious that an offence is made out under the Act against the petitioners, who are father and sons. Thus, as rightly contended by learned APP, the present application would also not be maintainable in view of bar of Section 76(2) of the Act.

8. Having regard to the aforesaid, the Court is not inclined to grant pre-arrest bail to the petitioners.

9. Accordingly, the application stands dismissed, both on merits as well as on the ground of non-maintainability.

(Ahsanuddin Amanullah, J)

J. Alam/-

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