

(2020) 11 PAT CK 0024

Patna High Court

Case No: Criminal Miscellaneous No. 25373 Of 2020

Manish Kumar @ Manish Kumar
Sahni And Anr

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision: Nov. 4, 2020

Acts Referred:

- Bihar Prohibition And Excise Act, 2016 - Section 30(a), 76(2)
- Code Of Criminal Procedure, 1973 - Section 438

Hon'ble Judges: Ahsanuddin Amanullah, J

Bench: Single Bench

Advocate: Yogesh Kumar, Surendra Prasad Singh

Final Decision: Dismissed

Judgement

1. The matter has been heard via video conferencing due to circumstances prevailing on account of the COVID-19 pandemic.

2. Heard Mr. Yogesh Kumar, learned counsel for the petitioners and Mr. Surendra Prasad Singh, learned Additional Public Prosecutor (hereinafter referred to as the "APP"™) for the State.

3. The petitioners apprehend arrest in connection with Mufassil PS Case No. 18 of 2020 dated 17.01.2020 (GR No. 57 of 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 from their house there was recovery of 5 litres of mahua wine and 20 kgs. of jaggery mixture for preparing country made liquor.

5. Learned counsel for the petitioners submitted that the house belongs to the father of petitioner no. 1, who is accused in another case of similar nature, but the petitioners, who are son and mother, have no concern with such recovery and were not even aware of the seized articles. It was further submitted that the petitioners have no criminal antecedent.
6. Learned APP submitted that the law stipulates that if anything is recovered, which is in contravention of the Act, the person from whose premises such material is seized, would be liable and the house definitely belongs to the petitioners, they cannot claim innocence. It was further submitted that in view of Section 76(2) of the Act, an application for grant of pre-arrest bail under Section 438 of the Code of Criminal Procedure, 1973 is not maintainable and in the present case where there is direct allegation against the petitioners of recovery of illicit liquor and material for manufacturing country-made liquor from their house, the present application would not be maintainable.
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 with regard to maintainability of the application.
8. Accordingly, the application stands dismissed as not maintainable.