

(2021) 05 PAT CK 0059**Patna High Court****Case No:** Criminal Miscellaneous No. 34548 Of 2020

Ravi Pandey @ Ravi Prakash

Pandey And Ors

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision: May 21, 2021**Acts Referred:**

- Bihar Prohibition And Excise Act, 2016 - Section 30(a), 76(2)

Hon'ble Judges: Ahsanuddin Amanullah, J**Bench:** Single Bench**Advocate:** Pankaj Kumar Singh, Anant Kumar**Final Decision:** Dismissed**Judgement**

1. The matter has been heard via video conferencing.
2. Heard Mr. Pankaj Kumar Singh, learned counsel for the petitioners and Mr. Anant Kumar No. 1, learned Additional Public Prosecutor (hereinafter referred to as the "APP") for the State.
3. The petitioners apprehend arrest in connection with Panchrukhi PS Case No. 112 of 2020 dated 13.05.2020, 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 outside the house of their brother, co-accused Shashi Bhushan Pandey, there was recovery of 45 bottles of liquor totalling 18.375 litres.
5. Learned counsel for the petitioners submitted that they have no connection with the brother and even recovery is said to have taken place from

outside his house. Learned counsel submitted that in the FIR itself it has been stated that the seizure witnesses were two constables which clearly

raises suspicion as the neighbours refused to become witness. It was submitted that on the seizure list, though the reference is with the present case

dated 13.05.2020, but in the column of date and time, it is written 14.05.2019 at 22:10 o'clock and even the signature of the informant is dated

14.05.2019. Learned counsel submitted that the petitioners have no criminal antecedent and have nothing to do with their brother as they live

separately from him and he lives in his own house. It was submitted that had the Choukidar identified the petitioners and their brother, at least he could

have been one of the witnesses but the same not being the case, there is doubt with regard to the correctness of the allegation. Learned counsel drew

the attention of the Court to a news item in the daily newspaper Prabhat Khabar dated 15.05.2020, which indicates that there was recovery of 45

bottles of liquor under the same police station which tallies the number of bottles shown to have been recovered from outside the house of the brother

of the petitioners, which clearly shows that there has been false implication by the police. Learned counsel submitted that there is no connection of the

recovered liquor with the petitioners and, thus, there would not be any bar of Section 76(2) of the Act as no offence is made out against them under

the Act. It was submitted that the petitioners have no criminal antecedent and further that co-accused Shashi Bhushan Pandey @ Pappu Pandey @

Pappu has been granted anticipatory bail by order dated 09.04.2021 in Cr. Misc. No. 35284 of 2020.

6. On the submission of learned counsel, earlier the Court had asked to learned APP to obtain up-to-date copy of the case diary with a specific report

with regard to the place from where recovery has been made, i.e., whether it was from the portion owned by the accused or outside the portion

owned by the accused.

7. Learned APP, from the case diary, submitted that the recovery has been made from the behind the house of the petitioners and it has come that the

petitioners were living together with co-accused Shashi Bhushand Pandey @ Pappu Pandey @ Pappu and all brothers were indulging in the illegal

business of liquor. It was submitted that the report clearly states that the land is just behind the house of the petitioners and belongs to one Kashi Nath Bairagi, but from a long time it has been taken on bataidari by the petitioners and, thus, learned counsel submitted that the present application is also not maintainable due to bar under Section 76(2) of the Act. It was submitted that in the seizure-list due to slip of pen the date instead of 13.05.2020, at some places 14.05.2019 has been written, which cannot be said to be falsify the prosecution case, as apparently since in the erroneous recording it is also wrongly mentioned as year 2019; clearly indicating that the entire date has been erroneously written as 14.05.2019 instead of 13.05.2020. It was submitted that it is a bona fide mistake and not any incorrect fact has been recorded.

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. Further, on the specific report of the Superintendent of Police, Siwan that the petitioners live in a joint house and from the place from which recovery has been made is under their control and possession being taken on bataidari, 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.