

(2021) 04 PAT CK 0091

In the Patna High Court

Case No : Criminal Miscellaneous No. 33997 Of 2020

Shatrughan Manjhi And Ors

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision : 13-04-2021

Acts Referred:

Indian Penal Code, 1860 — Section 272, 273, 414
Bihar Prohibition And Excise Act, 2016 — Section 30(a), 30(D), 76(2)
Code Of Criminal Procedure, 1973 — Section 438

Citation : (2021) 04 PAT CK 0091

Hon'ble Judges : Ahsanuddin Amanullah, J

Bench : Single Bench

Advocate : Raju Kumar, Raj Kishore Singh

Final Decision : Disposed Of

Judgement

1. The matter has been heard via video conferencing.
2. Heard Mr. Raju Kumar, learned counsel for the petitioners and Mr. Raj Kishore Singh, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.
3. The petitioners apprehend arrest in connection with Sahebganj PS Case No. 512 of 2019 dated 26.11.2019, instituted under Sections 272, 273, 414 of the Indian Penal Code and 30(a), 30(D) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the 'Act').
4. The allegation against the petitioners and others is that from their house various quantity of liquor/raw materials for preparing liquor have been recovered.
5. Learned counsel for the petitioners submitted that the seizure list has not been prepared with regard to all the accused and in the case of many, it has been stated in the FIR itself that and the articles were destroyed. Learned counsel submitted that a co-ordinate Bench by order dated 05.04.2021 in Cr. Misc. No. 36006 of 2020 has granted anticipatory bail to co-accused, Akhilesh

Manjhi, and Bhikhari Manjhi, and has rejected the same for co-accused Ashok Manjhi on the ground that from the house of Ashok Manjhi, there was recovery of liquor, but from the house of Akhilesh Manjhi and Bhikhari Manjhi, there was no recovery.

6. Learned APP submitted that the present petition is not maintainable in view of bar of Section 76(2) of the Act. It was submitted that there is recovery shown from the house of all the petitioners and, thus, prima facie, offence is made out under the Act and the application would, thus, not be maintainable. Learned counsel submitted that even the co-ordinate Bench had granted anticipatory bail to Akhilesh Manjhi and Bhikhari Manjhi as there was no recovery from their houses, but with regard to Ashok Manjhi, it was rejected as there was recovery. It was submitted that, thus, the case of the petitioners cannot be said to be similar to that of Akhilesh Majhi and Bhikhari Manjhi.

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 the learned APP. Once, as per the FIR, there is recovery from the house of the petitioners, application under Section 438 of the Code of Criminal Procedure, 1973, would not be maintainable in view of bar of Section 76(2) of the Act.

8. In the aforesaid background, the application stands disposed off as not maintainable.

9. However, in view of submission of learned counsel for the petitioners, it is observed that if the petitioners surrender before the Court below and pray for bail, within four weeks from today, the same shall be considered on its own merits, in accordance with law, without being prejudiced by the present order.