

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 12877 of 2020

Arising Out of PS Case No.-166 Year-2019 Thana- KURSAKANTA District- Araria

Rosan Giri @ Raushan Giri, aged about 30 years, Gender-Male, Son of Mayanand Giri, Resident of Village- Mehdipur, Ward No. 12, P.S.- Kursakanta, District- Araria.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Mayank Bilochan, Advocate
For the State : Mr. Abhay Kumar Roy, APP

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH**

ORAL JUDGMENT

Date : 09-10-2020

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

2. Heard Mr. Mayank Bilochan, learned counsel for the petitioner and Mr. Abhay Kumar Roy, learned Additional Public Prosecutor (hereinafter referred to as the ‘APP’) for the State.

3. The petitioner apprehends arrest in connection with Kursakanta (Sonamani Godam OP) PS Case No. 166 of 2019 dated 20.06.2019, instituted under Section 30(a) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the ‘Act’).



4. The allegation against the petitioner is that from his motorcycle 298 bottles of Nepali liquor of 300 ml. each was seized.

5. Learned counsel for the petitioner submitted that he is not named in the FIR. It was further submitted that though the motorcycle is in his name but on the same day, it was stolen and when the petitioner went to lodge case in the police station, his papers were snatched by the police and he was also thrown out of the police station. Learned counsel submitted that the petitioner is on bail in the other case on the ground that at the relevant time Section 30(a) of the Act was not in force.

6. Learned APP submitted that the petition is not maintainable in view of the bar of Section 76(2) Act. It was submitted that admittedly the motorcycle is in the name of the petitioner and the stand that it was stolen and he had gone to the police station on the same day and was thrown out and his papers were also snatched is totally unbelievable. Learned counsel submitted that earlier also the petitioner has antecedent of a case for the same offence and, thus, the petitioner having again committed the offence, would also indicate that he has no respect for the law and has been repeating the offence. Learned counsel further submitted that as a matter of fact, the petitioner dealing in



liquor, which is a prohibited in the State of Bihar, clearly indicates that he is involved in such activity.

7. Having considered the facts and circumstances of the cases and submissions of learned counsel for the parties, the Court finds that when undisputedly the motorcycle from which recovery has been made is registered in the name of the petitioner, there is direct nexus to the recovery and an offence is *prima facie* made out under the Act and accordingly, the bar of Section 76(2) of the Act would apply.

8. For reasons aforesaid, the application stands dismissed as not maintainable.

9. However, if the petitioner surrenders before the Court below and prays for bail, the same shall be considered on its own merits, in accordance with law, without being prejudiced by the present order.

(Ahsanuddin Amanullah, J.)

P. Kumar/Anand Kr.

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