

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 12859 of 2020

Arising Out of PS Case No.-132 Year-2019 Thana- RAJAULI District- Nawada

Hirdesh Kumar @ Hirdesh Yadav (Male), aged about 31 years, Son of Ganauri Yadav, Resident of Village - Bhajji Bhita, P.S. - Rajauli, District - Nawada.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Birendra Kumar, Advocate
For the State	:	Ms. Asha Devi, 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. Birendra Kumar, learned counsel for the petitioner and Ms. Asha Devi, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

3. The petitioner apprehends arrest in connection with Rajauli PS Case No. 132 of 2019 dated 16.04.2019, 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 upon interception of his motorcycle by the police, he ran away and from the motorcycle 41 litres of liquor was recovered.



5. Learned counsel for the petitioner submitted that neither the motorcycle belongs to him nor was he driving the same and, thus, his implication is totally unwarranted. It was further submitted that the petitioner has no criminal antecedent.

6. On a query of the Court as to why the petitioner had moved before the Court below when he was not named in the FIR and the motorcycle from which recovery has been shown did not belong to him, learned counsel for the petitioner submitted that the police was after him as during investigation, it came that the petitioner had bought the motorcycle in the year 2018, from the owner i.e., much prior to the date of the incident.

7. Learned APP submitted that in view of the petitioner being the actual owner as it has come during investigation that the owner who is on record had sold the motorcycle to the petitioner in the year 2018 and the recovery being made in the year 2019, the petition is also not maintainable under Section 76(2) of the Act. It was further submitted that there being direct evidence of the motorcycle having been bought by the petitioner much prior to the recovery, the petitioner cannot claim that he was not involved with the recovered liquor.



8. Having considered the facts and circumstances of the cases and submissions of learned counsel for the parties, the Court finds force in the contention of learned APP.

9. For reasons aforesaid, the Court is not inclined to grant pre-arrest bail to the petitioner.

10. Accordingly, the application stands dismissed.

11. 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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