

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.12916 of 2020

Arising Out of PS. Case No.-407 Year-2019 Thana- BASANTPUR District- Siwan

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Sujeet Kumar Mahto aged about 32 years, Gender-Male, Son of Prameshwar Mahto, Resident of Village - Saani Bagahi, P.S.- Basantpur, District- Siwan

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Bijay Prakash Singh, Adv.

For the Opposite Party/s : Ms. Pushpa Sinha, APP

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 12-10-2020

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

2. Heard Mr. Bijay Prakash Singh, learned counsel for the petitioner and Ms. Pushpa Sinha, learned Additional Public Prosecutor (hereinafter referred to as the ‘APP’) for the State.

3. The petitioner apprehends arrest in connection with Basantpur PS Case No. 407 of 2019 dated 03.11.2019, instituted under Sections 272, 273, 308 of the Indian Penal Code & Sections 30(a), 37(c) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the ‘Act’).

4. The allegation against the petitioner is that upon search from his field 2 litres of country made liquor was recovered.



5. Learned counsel for the petitioner submitted that it was recovered from the open field and the petitioner was not aware of the same and the same also did not belong to him. It was submitted that the petitioner has no criminal antecedent.

6. Learned APP submitted that the application is not maintainable in view of bar of Section 76(2) of the Act. It was submitted that the admitted position is that country made liquor, which is prohibited, has been recovered from the field of the petitioner and thus, a case is made out under the Act, and Section 76(2) of the Act, does not permit a petition for anticipatory bail under Section 438 of the Code of Criminal Procedure, 1973 to 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.

8. In view thereof, the application stands dismissed as not maintainable.

(Ahsanuddin Amanullah, J)

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