

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.12781 of 2020

Arising Out of PS. Case No.-333 Year-2019 Thana- PAHARPUR District- East Champaran

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Ganesh Mahto @ Ganesh Kumar, aged about 22 years, male, son of Hardev Mahto, resident of village - Saraiya Briti Dhangar Tola, P.S.- Paharpur, Dist.- East Champaran

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rajesh Kumar, Advocate

For the Opposite Party/s : Mr. Jharkjandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 07-10-2020

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

2. Heard Mr. Rajesh Kumar, learned counsel for the petitioner. Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') submitted that Mr. Humayou Ahmad Khan, learned APP, who has been assigned the brief, has requested him to appear before the Court as he is in some personal difficulty. Accordingly, the Court has heard Mr. Jharkhandi Upadhyay, learned APP for the State.

3. The petitioner apprehends arrest in connection with Paharpur PS Case No.333 of 2019 dated 20.10.2019, 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 and another accused is that when the police reached their shop of eggs and snacks, upon receiving information that they were selling liquor there, both of them had run away and from behind the shop of the petitioner, hidden in the bricks in a polythene, from a jerrycan, 10 litres of country made liquor was recovered.

5. Learned counsel for the petitioner submitted that there was no recovery from the conscious possession of the petitioner or from his shop and the same was from behind his shop for which he is not responsible. It was submitted that co-accused, Jitendra Sah, has been granted anticipatory bail by a co-ordinate Bench in Cr. Misc. No.16066 of 2020 on 12.06.2020 and that the petitioner has no criminal antecedent.

6. Learned APP raised a preliminary objection and submitted that the present application is not maintainable as there is specific bar to the same under Section 76(2) of the Act. It was submitted that, at this stage, the Court need not go into the defence of the accused and if *prima facie* case is made out under the Act, the application under Section 438 of the Code of Criminal Procedure, 1973, would not be maintainable. It was submitted that as per the allegation, it is obvious that the



recovery has been made from behind the shop of the petitioner hidden in the bricks and the petitioner having run away from his shop upon seeing the police, it is very much obvious that the petitioner was involved in such activity.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds merit in the objection of the learned APP. The Court, at this stage, is not required to go into the defence. Since there is specific allegation that upon seeing the police, the petitioner had run away from his shop and just behind his shop hidden in the bricks country made liquor has been recovered from a jerrycan, the Court finds that the present application is not maintainable.

8. Accordingly, the application stands dismissed as not maintainable.

(Ahsanuddin Amanullah, J)

J. Alam/-

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