

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.13259 of 2020**

Arising out of PS. Case No.-28 Year-2020 Thana- BARHARA KOTHI District- Purnia

Bablu Kumar Sah @ Bablu Sah, aged about 32 years, Male, Son of Late Chandeshwari Sah, Resident of Village - Basudeopur, P.s.- Barhara, Dist.- Purnia.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

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

For the Opposite Party/s : Mr. Rajendra Nath Jha, APP

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

Date : 14-10-2020

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

2. Heard Mr. Kumar Praveen, learned counsel for the petitioner and Mr. Rajendra Nath Jha, learned Additional Public Prosecutor (hereinafter referred to as the ‘APP’) for the State.

3. The petitioner apprehends arrest in connection with Barhara PS Case No. 28 of 2020 dated 24.01.2020, instituted under Sections 272 and 273 of the Indian Penal Code and Section 30(a) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the ‘Act’).

4. Though the Court had earlier called for the case diary and the same has been received, but in view of the preliminary



objection raised by learned APP with regard to maintainability of the application, the Court has proceed to hear the same.

5. The allegation against the petitioner is that from his wooden kiosk in a white coloured plastic gallon about 5 litres of country-made *mahua* wine was recovered.

6. Learned counsel for the petitioner submitted that the said wooden kiosk was abandoned and unused and, thus, the petitioner was neither aware what was inside nor the recovered liquor belonged to him. It was submitted that a series of raid was conducted on 24.01.2020 and recovery of liquor has been shown from various other persons also. It was further submitted that due to rivalry between the present and past Mukhiya, the petitioner being supporter of the previous Mukhiya, has been targeted and falsely implicated at the behest of local village politics. Learned counsel submitted that besides the quantity recovered being low, the petitioner has no criminal antecedent.

7. Learned APP submitted that in view of bar of Section 76(2) of the Act no application for grant of pre-arrest bail under Section 438 of the Code of Criminal Procedure, 1973 is maintainable, more so, in view of the fact that in the present case, there is recovery of illicit liquor from the wooden kiosk belonging to the petitioner and the ownership of the kiosk is not denied.



8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds substance in the objection of learned APP with regard to maintainability of the present application.

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

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

(Ahsanuddin Amanullah, J)

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