

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.13443 of 2020

Arising Out of PS. Case No.-68 Year-2019 Thana- SALAIYA District- Aurangabad

Manoj Kumar Pandey, aged about 26 years, Male, Son of Gopal Pandey,
Resident of Village and P.S. - Etkhori, District - Chatra (Jharkhand)

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

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

For the State : Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 15-10-2020

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

2. Heard Mr. Sanjay Kumar, learned counsel for the
petitioner.

3. Mr. Rajendra Prasad Nat, learned Additional Public
Prosecutor (hereinafter referred to as the 'APP'), who has been
assigned the brief and his name also appearing in the cause list, has
informed the Technical Assistant of the Court that he would not be
able to appear and has requested that assistance be taken of the
learned APP In-charge of the Court.

4. Accordingly, Mr. Jharkhandi Upadhyay, learned APP
In-charge of the Court has been heard.

5. The petitioner apprehends arrest in connection with
Salaiya PS Case No. 68 of 2019 dated 16.10.2019, instituted under



Section 30(a) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the 'Act').

6. The allegation against the petitioner is that from a Scorpio vehicle, 360 litres of spirit was recovered and his father was also caught on the vehicle which was registered in his name.

7. Learned counsel for the petitioner submitted that he is not named in the FIR and was not present on the vehicle when it was caught and seizure was made. It was submitted that the father being caught on the vehicle, clearly shows that the father was using the vehicle which was without the consent or knowledge of the petitioner and since the vehicle was being taken by the father, he had no reason to suspect or object. Learned counsel submitted that there is nothing else to link the petitioner to the recovered spirit and that he has no criminal antecedent.

8. Learned APP submitted that when the ownership of the Bolero vehicle from which recovery has been made is not disputed and father of the petitioner has also been arrested from the vehicle, there is direct link and connection with the recovered article to the petitioner and in this background, application under Section 438 of the Code of Criminal Procedure, 1973 would not be maintainable in view of bar of Section 76(2) of the Act. It was further submitted that even otherwise on merits, it cannot be



accepted that the son would be unaware of the activities of the father and would in good faith give the vehicle without knowing for what it was being used. It was further submitted that the petitioner being only 26 years of age owning an expensive SUV, itself indicates that he was indulging in criminal activities where he had earned a lot at such young age.

9. 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 application and also with regard to merits of the case.

10. Accordingly, for reasons aforesaid, the application stands dismissed, both on the ground of maintainability and merits.

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)

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