

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.13157 of 2020**

Arising out of PS. Case No.-61 Year-2020 Thana- KHAGARIA District- Khagaria

Uday Kewat @ Ram Uday Kewat, aged about 36 years (Male), S/o Late Yogeshwar Kewat, Resident of Village-Gopi Tola, Lavgaon, P.S.-Gangour, District-Khagaria.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

**Appearance :**

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

For the Opposite Party/s : Mr. Manoj Kumar, APP

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

**Date : 13-10-2020**

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 and Mr. Manoj Kumar, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

3. The petitioner apprehends arrest in connection with Khagaria (Gangour) PS Case No. 61 of 2020 dated 22.01.2020, 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 from his house 15 litres of country-made *mahua* wine and 100 litres of raw *mahua* were recovered though seizure was only of 15 litres of



country-made *mahua* wine as the raw *mahua* was destroyed at the spot.

5. Learned counsel for the petitioner submitted that the house was empty and, thus, recovery is not from the conscious possession of the petitioner. It was further submitted that the house is the joint house and the petitioner is not the sole owner of the same and, thus, anything recovered from there, liability cannot be fastened on the petitioner. It was submitted that the petitioner has no criminal antecedent.

6. Learned APP submitted that from the house of the petitioner 15 litres of country-made *mahua* wine and 100 litres of raw *mahua* being recovered clearly is an offence under the Act and, thus, application for grant of pre-arrest bail under Section 438 of the Code of Criminal Procedure, 1973 would not be maintainable due to the bar of Section 76(2) of the Act. It was further submitted that even on merits the petitioner cannot take advantage even if the house was jointly owned for each and every person who is the co-owner is liable and the petitioner not denying his co-ownership, such defence cannot be entertained, at least for the present.

7. 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.

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

**(Ahsanuddin Amanullah, J)**

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