

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 25380 of 2020

Arising Out of PS Case No.-13 Year-2020 Thana- NANPUR District- Sitamarhi

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Santosh Nayak, aged about 35 years (Male) Son of Chandeshvar Nayak
Resident of Village/Mohalla-Latraha, P.S.-Jale, District-Darbhanga.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Kedar Jha, Advocate

For the State : Mr. Uday Chandra Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 05-11-2020

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

2. Heard Mr. Kedar Jha, learned counsel for the petitioner and Mr. Uday Chandra Prasad, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

3. The petitioner apprehends arrest in connection with Nanpur PS Case No. 13 of 2020 dated 16.01.2020, instituted



under Sections 30, 30(a) and 38(i)(ii) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the 'Act').

4. The allegation against the petitioner is that from his pick-up van, 813 litres of foreign liquor was recovered and 2-3 persons on the vehicle had fled away in the darkness after seeing the police.

5. Learned counsel for the petitioner submitted that he was neither caught at the spot nor anything recovered from his possession and further that the vehicle was being driven by another person and there was a *khalasi* on that and even if the liquor was recovered from the vehicle, it was due to the conduct of the driver and the *khalasi* and the petitioner was neither involved nor aware of the same. It was submitted that the vehicle was new and the petitioner has been implicated only on the basis of suspicion. Learned counsel submitted that the petitioner, who is a businessman, trading in transportation of vegetables from Darbhanga market to various places including Sitamarhi market. It was submitted that the petitioner has no criminal antecedent. It was further submitted that the driver and *khalasi* of the vehicle have already been granted anticipatory bail by a co-ordinate Bench by order dated 11.06.2020 in Cr. Misc. No. 14897 of 2020.



6. Learned APP submitted that the articles having been recovered from the vehicle which admittedly is owned by the petitioner, there cannot be any question of the petitioner not being aware of the same. It was further submitted that the petitioner lives in Darbhanga and the vehicle having been caught in Sitamarhi and there being no other material or articles found on the vehicle and only huge quantity of liquor clearly shows that it was with the knowledge and consent of the petitioner for it cannot be believed that a person would let his new vehicle go outside the district taking some other material and not vegetables, as has been claimed by him. Further, it was submitted that the application itself is not maintainable in law for the reason that Section 76(2) of the Act bars filing of application for pre-arrest bail for an offence under the Act under Section 438 of the Code of Criminal Procedure, 1973 and since the admitted fact is that huge quantity of liquor has been recovered from the vehicle belonging to the petitioner, the application is not maintainable.

7. Having considered the facts and circumstance of the case and submissions of learned counsel for the parties, the Court finds substance in the contention of learned APP with regard to maintainability of the application as well as on merits.



8. Accordingly, the application stands dismissed on the ground of maintainability as well as on merits.

(Ahsanuddin Amanullah, J.)

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