

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.17457 of 2021**

Arising Out of PS. Case No.-136 Year-2020 Thana- MANIGACHI District- Darbhanga

Shravan Roy @ Sharvan Rai @ Sharvan Kumar Rai (M), aged about 35 years, Son of Jungle Roy @ Khartar Ray, Resident of Village - Bhattapura, P.S.- Manigachi, District - Darbhanga.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Ms. Aprajita, Advocate
For the State : Ms. Pronoti Singh, APP

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

Date : 21-08-2021

The matter has been heard *via* video conferencing.

2. The case has been taken up out of turn on the basis of motion slip filed by learned counsel for the petitioner on 09.08.2021, which was allowed.

3. Heard Ms. Aprajita, learned counsel for the petitioner and Ms. Pronoti Singh, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

4. The petitioner apprehends arrest in connection with Manigachi PS Case No. 136 of 2020 dated 24.06.2020, instituted under Section 30(a) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the 'Act').

5. As per the allegation, when the police on prior information that the petitioner and others were dealing in illicit



liquor, went to the spot, some persons ran away leaving behind two motorcycles and one person was caught and there was recovery and upon his disclosure, the police recovered liquor from various places, including straw hut of the petitioner.

6. Learned counsel for the petitioner submitted that the recovery is about 500 metres away from the house of the petitioner and that he was not present at the time of seizure as he was with his wife at Primary Health Centre during child birth. Learned counsel submitted that the petitioner has no connection with the recovered liquor and has no other criminal antecedent. Further, it was submitted that similarly situated co-accused Suraj Kumar Ray has been granted anticipatory bail by a coordinate bench by order dated 25.06.2021 passed in Cr. Misc. No. 17100 of 2021.

7. Learned APP submitted that there is recovery from the premises belonging to the petitioner and, thus, offence is made out under the Act and therefore, the present petition under Section 438 of the Code of Criminal Procedure, 1973 would not be maintainable due to bar of Section 76(2) of the Act. Further, it was submitted that there has been no recovery from the premises of co-accused Suraj Kumar Ray and only on the statement of the arrested co-accused he has been implicated in the present case and,



thus, the petitioner cannot seek parity with co-accused Suraj Kumar Ray.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds substance in the contention of learned APP. Once the recovery is from the premises owned by the petitioner, *prima facie* an offence is made out under the Act and, thus, bar of Section 76(2) of the Act would apply.

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

(Ahsanuddin Amanullah, J)

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