

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.18442 of 2021**

Arising Out of PS. Case No.-213 Year-2020 Thana- BATHNAHA District- Sitamarhi

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Akash Mukhiya, aged about 30 years, Gender- Male, son of Panchu Mukhiya,
R/o village- Bathnaha, P.S.- Bathnaha, District- Sitamarhi

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Birendra Kumar, Advocate
For the State : Mr. Bharat Lal, APP

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

Date : 15-06-2021

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 yesterday, which was allowed.

3. Heard Mr. Birendra Kumar, learned counsel for the petitioner and Mr. Bharat Lal, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

4. The petitioner apprehends arrest in connection with Bathnaha PS Case No. 213 of 2020 dated 19.09.2020, instituted under Section 30(a) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the 'Act').

5. The allegation against the petitioner is that when the police had gone to raid the house of his father on information,



the petitioner and his brother had run away leaving the bag near their house after jumping into the pond and upon search of the bag, 90 bottles of Nepali *saufi* wine, each containing 300 ml., was recovered.

6. Learned counsel for the petitioner submitted that there is no recovery from the conscious possession of the petitioner and also not from his house. It was submitted that there was no occasion for the police to identify him as he was not known to them. It was submitted that the story of the petitioner having run away by swimming cannot be believed as the police party was required to pursue the person who had fled away but this was not done. Learned counsel contended that even the seizure has not been effected in accordance with law as neither the father of the petitioner nor any other family member has not been made a witness on the seizure list nor any copy of the same given to them. It was further submitted that the petitioner has no criminal antecedent.

7. Learned APP submitted that the petitioner has been specifically identified as the son of Panchu Mukhiya and when the police reached the spot, he along with his brother, was seen running away after putting down the sack outside his house from which there is recovery of liquor. Thus, learned APP



submitted that once there is specific identification by the police itself with regard to identity of the petitioner as also the fact that he, along with his brother, having left behind a sack and fleeing away and from the sack there being recovery of liquor, *prima facie*, offence is made out under the Act and thus, the bar of Section 76(2) of the Act would come into play and the present application itself would not be maintainable. Learned APP submitted that the objection of not having any family member of the petitioner as the seizure list witness and not serving them copy of the same does not hold good for the reason that the recovery was not from inside the house and further that there is no requirement of the police to make a particular person witness when the witnesses were co-villagers who had gathered there and further that since recovery was not from the house of the petitioner, there was no requirement of handing over a copy of the seizure list to any of the inmates of the house.

8. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court is not inclined to grant pre-arrest bail to the petitioner.

9. Accordingly, the application stands dismissed, both on merits as well on the ground of not being maintainable.

10. However, in view of submission of learned counsel



for the petitioner, it is observed that if the petitioner appears 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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