

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.18381 of 2021

Arising Out of PS. Case No.-298 Year-2020 Thana- SAHAR District- Bhojpur

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Ganesh Prasad Gupta, aged about 47 years, Male, son of Satya Narayan Gupta, R/O Village and P.S.- Sahar, District- Bhojpur (Ara)

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Yogesh Chadhra Verma, Senior Advocate with Mr. Maya Shankar Mishra, Advocate
For the State	:	Mr. Amitesh Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 15-04-2021

The matter has been heard *via* video conferencing.

2. Heard Mr. Yogesh Chandra Verma, learned senior counsel along with Mr. Maya Shankar Mishra, learned counsel for the petitioner and Mr. Amitesh Kumar, learned Additional Public Prosecutor (hereinafter referred to as the ‘APP’) for the State.

3. The petitioner apprehends arrest in connection with Sahar PS Case No. 298 of 2020 dated 24.12.2020, 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 on secret information, when the police reached his house, he managed to flee away with his two sons and one son was caught



and further, that from the vehicle standing inside the campus, there was recovery of liquor and from the godown in his house also, there was recovery of liquor.

5. Learned counsel for the petitioner submitted that the recovery is not from his conscious possession and he was not present in the house when the raid was conducted and recovery shown. It was further submitted that the vehicle from which recovery is shown is not owned by him.

6. Learned APP submitted that as per the allegation in the FIR, the recovery is from the vehicle, which was found inside the campus of the petitioner and also from the godown inside the house of the petitioner. Thus, it was submitted that offence is made out under the Act and 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.

7. 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 the learned APP. Once, as per the allegation, recovery is from the vehicle parked inside the premises of the petitioner as also recovery shown from the godown inside the house of the petitioner, *prima facie* offence being made out under the Act, the present application



for grant of pre-arrest bail would not be maintainable as the bar of Section 76(2) of the Act would come into play.

8. Accordingly, for reasons aforesaid, the application stands disposed off as not maintainable.

(Ahsanuddin Amanullah, J)

J. Alam/-

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