

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 21788 of 2021

Arising Out of PS Case No.-281 Year-2020 Thana- KAWAKOLE District- Nawada

Rajkumar Chaudhary, aged about 48 years, Male Son of Sukhdeo Chaudhary,
Resident of Village - Barraji, PS- Kawakole, District- Nawada.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Nasrul Hoda Khan, Advocate
For the State	:	Mr. Aditya Narayan Singh No. 1, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 13-07-2021

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 06.07.2021, which was allowed.

3. Heard Mr. Nasrul Hoda Khan, learned counsel for the petitioner and Mr. Aditya Narayan Singh No. 1, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

4. The petitioner apprehends arrest in connection with Kawakole PS Case No. 281 of 2020 dated 17.08.2020, 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 from his house when police on information went there, two people were seen running away and from the house, 3 litres of countrymade liquor was recovered.

6. Learned counsel for the petitioner submitted that the recovery is not from the area which was in the exclusive possession of the petitioner and further, it is not from the conscious possession of the petitioner. Learned counsel submitted that the petitioner has no connection with the recovered liquor and even the allegation of recovery is not correct as he has been falsely implicated due to local village politics, having no other criminal antecedent.

7. Learned APP submitted that recovery of liquor from the house of the petitioner, as alleged in the FIR, would constitute an offence is made out under the Act and the bar of Section 76(2) of the Act would come into play and the present petition under Section 438 of the Code of Criminal Procedure, 1973 would not be maintainable.

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 there is alleged recovery from the house of the petitioner, *prima facie*, an



offence is made out under the Act and, thus, the bar of Section 76(2) of the Act would be applicable in the present case.

9. For reasons aforesaid, the petition stands dismissed as not maintainable.

(Ahsanuddin Amanullah, J.)

P. Kumar

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