

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 28048 of 2020

Arising Out of PS Case No.-236 Year-2019 Thana- BENIPATTI District- Madhubani

Santosh Kumar Mandal @ Santosh, Male aged about 35 years, Son of Ram Sewak Prasad, Resident of Village-Dindarpur, 283, Block-D, Shyam Vihar Phase-1, Police Station-Najafgarh, District-South West Delhi, State-Delhi at present resident of Village-Mangrahta, Police Station-Khirhar, District-Madhubani.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Anant Kumar Bhaskar, Advocate
For the State : Mr. Md. Arif, APP

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

ORAL JUDGMENT

Date : 22-01-2021

Heard Mr. Anant Kumar Bhaskar, learned counsel for the petitioner and Mr. Md. Arif, learned In-charge Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

2. The petitioner apprehends arrest in connection with Benipatti PS Case No. 236 of 2019 dated 20.08.2019, instituted under Sections 30 (a) of the Bihar Prohibition and Excise Act, 2016.

3. The allegation against the petitioner, though not named in the FIR, is that from the Scorpio vehicle belonging to him, 78 litres of nepali countrymade liquor was recovered.



4. Learned counsel for the petitioner submitted that he is not involved and only after seven months a corrigendum was sent to the Court by the prosecution for making the petitioner an accused on the basis of him being the owner of the Scorpio vehicle. Learned counsel submitted that the vehicle was released in favour of the petitioner by the Court and only then the prosecution has woken up.

5. Learned APP raised a preliminary objection and submitted that the application is not maintainable under the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the 'Act'), since Section 76(2) of the Act does not permit filing of application under Section 438 of the Code of Criminal Procedure, 1973 for grant of pre-arrest bail.

6. Having considered the matter, the Court finds substance in the contention of learned APP. Once there is no denial that the vehicle from which liquor was recovered is registered in the name of the petitioner, which is further proved by the fact that the petitioner had filed an application for release and the Court had allowed the same, it cannot be said that no offence is made out under the Act.

7. For reasons aforesaid, the application stands dismissed as not maintainable.



8. As the Court did not find the application to be supported by affidavit from its record, on a query to learned counsel for the petitioner, it was submitted that the main application supported by affidavit has been *e* filed on 08th January, 2021. However, the Court Master informed that the same is not reflected from the High Court portal.

9. Be that as it may, let learned counsel for the petitioner verify the position and if required, the main application supported by affidavit be *e* filed latest by Monday (25.01.2021) and the physical copy of which shall be filed when the same resumes.

(Ahsanuddin Amanullah, J.)

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