

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.28121 of 2020

Arising Out of PS. Case No.-396 Year-2019 Thana- SIRDALA District- Nawada

Chandan Kumar, aged about 24 years, (male), Son of Ramanand Yadav,
Resident of Village - Bandhi, P.S.- Meshkaur, District - Nawada.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Vishwa Ranjan Choudhary, Advocate
For the State : Mr. Amitesh Kumar, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 27-01-2021

The matter has been heard *via* video conferencing.

2. Heard Mr. Vishwa Ranjan Choudhary, 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 Sirdala PS Case No. 396 of 2019 dated 13.09.2019, instituted under Section 30(d) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the 'Act').

4. The allegation against the petitioner is that from his house 5.5 litres country-made liquor was recovered along with a motorcycle without number plate.



5. Learned counsel for the petitioner submitted that nothing has been recovered from his conscious possession and that he was living separately from his parents.

6. Learned APP raised a preliminary objection and submitted that the application is not maintainable in view of bar of Section 76(2) of the Act which does not permit filing an application under Section 438 of the Code of Criminal Procedure, 1973. It was submitted that the mother of the petitioner had taken the police to her house from where recovery has been made and she has disclosed that the petitioner had come on motorcycle and kept the liquor in the house.

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 learned APP. *Prima facie*, offence is made out under the Act as the recovery has been from the house of the petitioner, that too, on the disclosure of his mother before the police. Thus, the present application would not be maintainable in view of bar of Section 76(2) of the Act.

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

9. However, if the petitioner surrenders before the Court below and prays for bail within four weeks from today, 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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