

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.30713 of 2020

Arising Out of PS. Case No.-209 Year-2020 Thana- BUXAR MUFFSIL District- Buxar

Saral Choudhary @ Ram Naresh Choudhary, Aged about 33 years, male, Son of Keso Choudhary @ Keshav Choudhary, Resident of Village- Ejri Sri Ram, Ward No.12, P.S.- Buxar (M), District- Buxar.

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Anil Kumar Singh, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 30-01-2021

Heard Mr. Anil Kumar Singh, learned counsel for the petitioner and Mr. Jharkhandi Upadhyay, learned In-charge Additional Public Prosecutor (hereinafter referred to as the ‘APP’) for the State.

2. The petitioner apprehends arrest in connection with Buxar (M) PS Case No. 209 of 2020 dated 06.07.2020, instituted under Section 30(a) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the ‘Act’).

3. The allegation against the petitioner is that from his house, in a heap of straw, six bottles of whisky was recovered.

4. Learned counsel for the petitioner submitted that it was a joint house and belonged to his cousin brother Ram Niwas Choudhary and falsely his name has been introduced. It was submitted that the petitioner was not present in the village and



lives in Buxar working as a private House Guard. Learned counsel submitted that due to local village politics he has been made accused and further that he has no criminal antecedent.

5. 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 as *prima facie* the case is made out against the petitioner under the Act.

6. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds substance in the objection of learned APP.

7. Once the allegation is that from the house of the petitioner there is recovery of liquor, an offence is made out under the Act and in such circumstances, the application for grant of pre-arrest bail under Section 438 of the Code of Criminal Procedure, 1973 shall not be maintainable in terms of Section 76(2) of the Act.

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

(Ahsanuddin Amanullah, J)

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