

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 32075 of 2020

Arising Out of PS Case No.-136 Year-2019 Thana- HILSA District- Nalanda

Chul Chul Yadav @ Chul Chul Prasad @ Chulchul Singh @ Amirak @
Amirak Yadav, Male, aged about 54 years, Son of Late Bhunu Yadav @
Bhanu Prasad, At- Nawgarh, Police Station - Hilsa, District - Nalanda.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Niraj Kumar, Advocate

For the State : Mr. Umeshanand Pandit, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 09-03-2021

The matter has been heard *via* video conferencing.

2. Heard Mr. Niraj Kumar, learned counsel for the petitioner and Mr. Umeshanand Pandit, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

3. The petitioner apprehends arrest in connection with Hilsa PS Case No. 136 of 2019 dated 24.03.2019, instituted under Sections 272 and 273/34 of the Indian Penal Code and 30(a) 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 upon raid by the police, 50 litres of countrymade liquor was recovered and from that of his sons besides countrymade liquor, equipment for manufacturing of such liquor was also seized.



5. Learned counsel for the petitioner submitted that the recovery is not from the conscious possession of the petitioner as neither he nor any of his family members were present when the police is said to have searched the place. It was submitted that the petitioner has no criminal antecedent.

6. Learned APP raised a preliminary objection and submitted that once it is alleged that recovery is from the house of the petitioner, the present application under Section 438 of the Code of Criminal Procedure, 1973, is not maintainable in view of 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 objection of learned APP. The allegation being recovery of liquor from the house of the petitioner, *prima facie* constitutes an offence under the Act and so the present application will not be maintainable.

8. In view thereof, the application stands disposed off as not maintainable.

(Ahsanuddin Amanullah, J.)

P. Kumar

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