

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 31729 of 2020

Arising Out of PS Case No.-209 Year-2020 Thana- GOVERNMENT OFFICIAL COMP.
District- East Champaran

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Visheshwar Sahani, aged about 35 years (M), Son of Bijli Mukhiya @ Bijali Mukhiya, Resident of Village-Basantpur, PS-Mufasil, District-East Champaran.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

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

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN
AMANULLAH

ORAL JUDGMENT

Date : 12-02-2021

The matter has been heard *via* video conferencing.

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

3. The petitioner apprehends arrest in connection with Excise Case No. 209 of 2020 dated 03.09.2020, instituted under Sections 30(a) and 41(1) 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 and fields situated besides his house, 610 litres of spirit was recovered.



5. Learned APP raised a preliminary objection and submitted that the present application is not maintainable in view of bar of Section 76(2) of the Act which does not permit filing of an 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 objection of learned APP. In view of the allegation of recovery of spirit from the house of the petitioner, *prima facie*, case is made out under the Act and, thus, the present application shall not be maintainable.

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

(Ahsanuddin Amanullah, J.)

P. Kumar

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