

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.32049 of 2020

Arising out of PS. Case No.-61 Year-2020 Thana- LALIT NARAYAN UNIVERSITY
District- Darbhanga

=====

Anil Mahto aged about 30 years (Male) S/o Yogendra Mahto R/o
Vill/Mohalla- Laxmisagar, Anand Kishori Nagar Ward No. 15, P.S.-
L.N.M.U., Distt.- Darbhanga.

... .. Petitioner/s

Versus

The State of Bihar.

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Matloob Rab, Advocate
For the State : Mr. Manoj Kumar No. 1, APP

=====

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 12-03-2021

Heard Mr. Matloob Rab, learned counsel for the
petitioner and Mr. Manoj Kumar No. 1, learned Additional Public
Prosecutor (hereinafter referred to as the ‘APP’) for the State.

2. The petitioner apprehends arrest in connection with
LNMU PS Case No. 61 of 2020 dated 27.02.2020, instituted under
Sections 272/273/353/34 of the Indian Penal Code and 30(a) of the
Bihar Prohibition & Excise Act, 2016 (hereinafter referred to as
the “Act”).

3. The allegation against the petitioner, along with his
father and brother, is that from their house there has been recovery
of liquor.

4. Learned counsel for the petitioner submitted that the
recovery is from the house of the father of the petitioner and he is



separate in mess and not residing with the father. Learned counsel submitted that the petitioner has been falsely implicated by the police in the so-called confessional statement by the father before the police. Learned counsel submitted that the petitioner has no criminal antecedent.

5. Learned APP submitted that the petitioner, along with his father and brothers, were dealing in the business of liquor and the police has taken the name of the father of the petitioner as he was the guardian of the house and everybody lives in the same house and there was no separate house of each of the accused. It was submitted that even the present application is not maintainable in view of Section 76(2) of the Act as *prima facie* offence is made out under the Act.

6. Having considered the facts and circumstances of the case, this Court finds substance in the objection of learned APP with regard to maintainability. This Court finds that the house of the petitioner may be joint, but there being recovery and the statement of the father, at least *prima facie* offence is made out under the Act and under the circumstances the present application under Section 438(2) of the Code of Criminal Procedure, 1973 would not be maintainable as there is bar under Section 76(2) of the Act.



8. For reasons aforesaid, the application stands dismissed.

9. However, on submission of learned counsel for the petitioner, the Court would observe, that if the petitioner appears before the Court below within four weeks from today and prays for bail, the same shall be considered, on its own merits, in accordance with law, without being prejudiced by the present order.

(Ahsanuddin Amanullah, J)

Vikash/-

AFR/NAFR	
U	
T	

