

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.32052 of 2020

Arising Out of PS. Case No.-558 Year-2020 Thana- KHAGARIA District- Khagaria

Ruban Ram, aged about 37 years, Gender-Male, Son of Uttam Ram, resident of Village - Barai, Ward No. 07, P.S.- Khagaria (Gangore O.P.), District - Khagaria.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. N K Agrawal, Senior Advocate with Mr. Vijay Anand, Advocate
For the State	:	Mr. Abhay Kumar No. 1, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 19-03-2021

Heard Mr. N K Agrawal, learned senior counsel along with Mr. Vijay Anand, learned counsel for the petitioner and Mr. Abhay Kumar No. 1, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

2. The petitioner apprehends arrest in connection with Khagaria (Gangaur) PS Case No. 558 of 2020 dated 08.08.2020, instituted under Section 30(a) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the 'Act').

3. As per the FIR, there is recovery of 182 litres of foreign liquor from the house of the petitioner.

4. Learned counsel for the petitioner submitted that



the recovery is not from the conscious possession of the petitioner and the area from which it was recovered also does not belong exclusively to the petitioner. Learned counsel submitted that the petitioner does not have any criminal antecedent.

5. Learned APP raised a preliminary objection and submitted that 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 as there is allegation of recovery from the house of the petitioner, an offence is made out 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. Since allegation is that recovery is from the house of the petitioner, *prima facie*, offence is made out under the Act and, thus, bar of Section 76(2) of the Act would come into play.

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

8. However, in view of submission of learned counsel for the petitioner, 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)

J. Alam/-

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