

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.31970 of 2020**

Arising Out of PS. Case No.-186 Year-2020 Thana- GOVERNMENT OFFICIAL COMP.
District- Samastipur

Sanjay Kumar @ Sanjay Yadav, Male, aged about 44 years, S/o Late
Lagandev Yadav, R/o Mujari Ward No.1, P.S.- Khanpur, District- Samastipur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Bijay Bhushan Prasad, Advocate
For the State	:	Mr. Md. Arif, APP

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT**

Date : 09-03-2021

Heard Mr. Bijay Bhushan Prasad, learned counsel for the petitioner and Mr. Md. Arif, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

2. The petitioner apprehends arrest in connection with Excise Case No. 186 of 2020 dated 29.07.2020, 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 under-construction house 0.360 litre of Indian Made Foreign Liquor was recovered.

4. 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 which does not permit filing an



application under Section 438 of the Code of Criminal Procedure, 1973 in a matter where an offence is made out under the Act. It was submitted that the recovery being shown from the house of the petitioner, clearly an offence is made out under the Act and, thus, the bar of Section 76 (2) of the Act would come into play.

5. Having considered the matter, for the present, the Court would not go into the aspect whether the liquor belonged to the petitioner or not. Once it has been shown to be from the house of the petitioner, obviously, an offence is made out under the Act and, thus, the present application would not be maintainable.

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

7. In view of plea of learned counsel for the petitioner, the Court would observe that if the petitioner appears 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)

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