

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.31966 of 2020

Arising Out of PS. Case No.-404 Year-2019 Thana- PALASI District- Araria

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Pappu Mandal, aged about 26 years, Gender- Male, S/o Late Bhola Mandal @
Bhola Kanati, Resident of Village-Bangama, Ward No.07, P.S.-Palasi,
District-Araria.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Kumar Ravish, Advocate
For the State	:	Mr. Tapeswar Sharma, APP

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 09-03-2021

Heard Mr. Kumar Ravish, learned counsel for the petitioner and Mr. Tapeswar Sharma, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

2. The petitioner apprehends arrest in connection with Special Case No. 1691 of 2019 arising out of Palasi PS Case No. 404 of 2019 dated 21.12.2019, instituted under Section 30(a) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the 'Act').

3. As per the FIR, from the east side of the house of the petitioner, 48 bottles of 300 ml. each of Nepali liquor was recovered.

4. Learned counsel for the petitioner submitted that the petitioner was not present and, thus, the recovery is not from his



conscious possession. It was further submitted that the petitioner has no criminal antecedent.

5. 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 as in the present case, *prima facie*, a case 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.

7. Once recovery is alleged to be from the premises belonging to the petitioner, an offence is made out under the Act, and, thus, the present application would not be maintainable.

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

9. 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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