

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.33897 of 2020

Arising Out of PS. Case No.-213 Year-2019 Thana- AURAI District- Muzaffarpur

Amiri Singh, aged about 71 years, Gender-Male, Son of late Bhajju Singh,
Resident of Village- Prem Nagar, Bhalura, P.S. - Aurai, District- Muzaffarpur.
... .. Petitioner/s

Versus

The State of Bihar .

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ravi Ranjan, Advocate
For the State : Mr. Choubey Jawahar, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 16-03-2021

The matter has been heard *via* video conferencing.

2. Heard Mr. Ravi Ranjan, learned counsel for the petitioner and Mr. Choubey Jawahar, learned Additional Public Prosecutor (hereinafter referred to as the ‘APP’) for the State.

3. The petitioner apprehends arrest in Aurai PS Case No. 213 of 2019 dated 25.08.2019, instituted under Sections 272 and 273 of the Indian Penal Code and 30(a) 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 5.040 litres of foreign liquor was recovered.

5. Learned counsel for the petitioner submitted that he is 71 years old having various health issues. It was submitted



that even the recovery, which is shown is from the joint house of the petitioner and he is not the sole owner and that no family member has either signed on the seizure list or copy of the same has been given to them. It was submitted that the petitioner has no criminal antecedent.

6. Learned APP submitted that the petitioner being the head of the family, even if there are other partners in the property, he is equally liable for the recovery. It was submitted that since the recovery is from the house of the petitioner, the present application is also not maintainable due to bar of Section 76(2) of the Act as clearly offence is made out under the Act.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds substance in the contention of learned APP. Recovery being shown from the house of the petitioner, *prima facie*, offence is made out under the Act. Thus, the present application under Section 438 of the Code of Criminal Procedure, 1973, would not be maintainable due to bar of Section 76(2) of the Act.

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

9. Having regard to the submission of learned



counsel for the petitioner, it is observed that if the petitioner appears before the Court below and seeks 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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