

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.34687 of 2020

Arising Out of PS. Case No.-98 Year-2020 Thana- KASBA District- Purnia

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Sandeep Kumar Suman @ Sandeep Yadav @ Chhotu Yadav @ Sandeep Kumar, aged about 19 years(Male), Son of Shivanand Yadav, resident of Mohalla- Ratnsoti, Ward No.11, Majgawan, Police Station- Majgawan, District- Purnea.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Vikram Singh, Advocate
For the State : Mr. Md. Arif, APP.

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 29-04-2021

The matter has been heard via video conferencing.

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

3. The petitioner apprehends arrest in connection with Kasba P.S. Case No. 98 of 2020 dated 05.08.2020, instituted under Sections 272, 273 of the Indian Penal Code and Sections 30(a) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the 'Act').

4. The allegation against the petitioner is that he was coming along with co-accused on a motorcycle and when the police tried to stop him, the person driving the motorcycle was



caught whereas the other person, that is, the petitioner, is said to have run away. It is alleged that the arrested person disclosed the name of the petitioner as the person who was sitting behind on the motorcycle from which there was recovery of 15 litres of liquor bearing label for sale in West Bengal.

5. Learned counsel for the petitioner submitted that place of occurrence is near the village of the petitioner and he was only taking a ride on the motorcycle of the person who was arrested and had no role or knowledge of any liquor. It was submitted that the petitioner has no criminal antecedent. Learned counsel submitted that only because the petitioner, even if it is assumed that he was sitting behind on the motorcycle, would not make him an accused, as neither the motorcycle belongs to him nor he had any knowledge of what was being carried on the motorcycle.

6. Learned APP submitted that the co-accused had taken the name of the petitioner as the person who was sitting behind in the motorcycle and has fled away and as per his disclosure, he along with the petitioner used to transport liquor from West Bengal and sell it at the local level. Thus, it was submitted that *prima facie*, an offence is made out under the Act and the present application under Section 438 of the Code of



Criminal Procedure, 1973 would not be maintainable in view of bar of Section 76(2) of 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. Once an offence is made out under the Act, the present application would not be maintainable.

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

(Ahsanuddin Amanullah, J.)

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