

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.33883 of 2020

Arising Out of PS. Case No.-161 Year-2019 Thana- KUDHNI District- Muzaffarpur

Vijay Rai, aged about 30 years (Male), S/o Nanda Rai @ Nandlal Rai
Resident of Village-Sakari Saraiya Bintoliya, P.S.-Kudhni, District-
Muzaffarpur.

... .. Petitioner/s

Versus

The State of Bihar .

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Raju Kumar, Advocate
For the State : Mr. Dashrath Mehta, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 15-03-2021

The matter has been heard via video conferencing.

2. Heard Mr. Raju Kumar, learned counsel for the petitioner and Mr. Dashrath Mehta, learned Additional Public Prosecutor (hereinafter referred to as the ‘APP’) for the State.

3. The petitioner apprehends arrest in connection with Kudhni (Turki OP) PS Case No. 161 of 2019 dated 16.03.2019, instituted under Sections 147/ 148/ 149/ 341/ 323/ 353/ 427/ 337/ 338/ 504 of the Indian Penal Code; 30(a)/43/45 of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the ‘Act’) and 3(1)(v)(s) of Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

4. The allegation against the petitioner is that from his house 4.290 litres of illicit foreign liquor was recovered.



5. Learned counsel for the petitioner submitted that the petitioner has been falsely implicated and is innocent. It was further submitted that the petitioner was not apprehended at the spot. Learned counsel submitted that even the so-called recovered liquor did not belong to the petitioner. Learned counsel submitted that co-accused Ramesh Rai; Uday Rai @ Uday Kumar and Awadhesh Rai have been granted anticipatory bail by a coordinate bench on 19.09.2019 in Cr. Misc. No. 44414 of 2019.

6. Learned APP submitted that from the house and field of the petitioner there has been recovery of liquor and he was also responsible for the attack on the police party and beating up of Chowkidar and the police personnel who had to return after leaving the police jeep at the spot. Learned counsel submitted that there has been no recovery from the premises of co-accused who have been granted anticipatory bail by a coordinate bench. It was further submitted that the present application is also not maintainable in view of bar of Section 76(2) of the Act as *prima facie* 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. The recovery being said to be from the house and field of the petitioner, 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.

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

9. 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)

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