

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.34626 of 2020

Arising out of PS. Case No.-75 Year-2020 Thana- ADAPUR District- East Champaran

Bhushan Patel aged about 30 years (Male) S/o Sona Lal Patel @ Sonalal Raut
R/o village- Katakenava, P.S.- Adapur, District- East Champaran

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Vijay Shankar Shrivastava, Advocate
For the State : Mr. Akbar Ali, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 21-05-2021

The matter has been heard *via* video conferencing.

2. Heard Mr. Vijay Shankar Shrivastava, learned counsel for the petitioner and Mr. Akbar Ali, learned Additional Public Prosecutor (hereinafter referred to as the ‘APP’) for the State.

3. The petitioner apprehends arrest in connection with Adapur PS Case No. 75 of 2020 dated 09.03.2020, instituted under Sections 272/273 of the Indian Penal Code and 30(a) of the Bihar Prohibition & Excise Act, 2016 (hereinafter referred to as the ‘Act’).

4. The allegation against the petitioner is that 230 bottles each of 330 ml nepali country-made liquor kept in a sack totalling 69 litres was recovered from the room of the petitioner.

5. Learned counsel for the petitioner submitted that the petitioner has been falsely implicated due to local village politics.



Learned counsel submitted that the person who was caught by the police disclosed that he had brought 230 bottles of 330 ml each of Nepali country-made wine on a motorcycle and had handed over the same to the petitioner. It was submitted that when the police went to the house of the petitioner such recovery was shown, but the same is false implication as it was kept by others without knowledge or permission of the petitioner. Further, he submitted that nothing has been recovered from the conscious possession of the petitioner and the room from where alleged recovery has been made does not belong to him.

6. Learned APP submitted that the present application is not maintainable in view of bar of Section 76(2) of the Act which does not permit filing of an application under Section 438 of the Code of Criminal Procedure, 1973, as prima facie offence is made out under the Act, since recovery has been made from the room of the petitioner.

7. Having considered the facts and circumstances of the case and submissions of learned counsel, the Court finds substance in the contention of learned APP with regard to maintainability. Recovery having been made from the room of the petitioner would prima facie constitute an offence under the Act and under the circumstances the present application.



8. For the reasons aforesaid, the application stands disposed off as not maintainable.

9. However, on submission of learned counsel for the petitioner, the Court would observe, that if the petitioner appears before the Court below and prays for bail, 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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