

IN THE HIGH COURT OF JUDICATURE AT PATNA

CRIMINAL MISCELLANEOUS No.35478 of 2020

Arising Out of PS. Case No.-287 Year-2019 Thana- MANIYARI District- Muzaffarpur

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Bablu Kumar @ Bablu Mahto, aged about 22 years, Male, S/o Lakhindra
Mahto R/o village- Purshottampur, P.S.- Maniyari, District- Muzaffarpur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Dr. Bipin Chandra, Advocate

For the State : Mr. Pramod Kumar Pandey, APP

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 21-06-2021

The matter has been heard *via* video conferencing.

2. Heard Dr. Bipin Chandra, learned counsel for the petitioner and Mr. Pramod Kumar Pandey, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

3. The petitioner apprehends arrest in connection with Maniyari PS Case No. 287 of 2019 dated 24.10.2019, instituted under Sections 272/273/34 of the Indian Penal Code and 30(a)/34/36/38/41 of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the 'Act').



4. The allegation against the petitioner is that when the police on information went to the spot, he along with others ran away and one Tata Indica Car and one Motorcycle were seized from the spot and from the Tata Indica Car 22.480 litres of liquor was recovered.

5. Learned counsel for the petitioner submitted that he has been falsely implicated only because the motorcycle belongs to him, though no recovery from the same has been made. It was submitted that the petitioner was going with his uncle to visit a person and in the meantime, the police stopped him for paper checking but because of being in hurry as he had left the papers at home, he had gone to fetch and when he returned, the motorcycle was not there and when he reached the police station he was told to move the Court for release of the vehicle. Learned counsel submitted that though he is the owner of the motorcycle, but is unconnected with the entire episode or recovery or has any connection with the Indica car and has no criminal antecedent.

6. Learned APP submitted that in the FIR itself it has been stated that the police received information that from the Indica Car delivery was being given of liquor and, thus, when the police went there, the Car was standing and some persons ran away from it and it is obvious that the person on the motorcycle



was there to take delivery. It was submitted that admittedly when the petitioner accepts that he was at the spot driving his motorcycle, it is obvious that he was also involved in the business of liquor and was taking delivery of the same. Learned counsel submitted that there cannot be any occasion for a person who is travelling with his uncle to leave his motorcycle alone and go to his house to take papers, especially when his uncle, who was also with him, could have stayed behind with the motorcycle. It was submitted that the conduct of the petitioner running away and his motorcycle being recovered at the spot indicates that there is direct nexus between the recovered liquor and the petitioner. Thus, learned APP submitted that the present petition under Section 438 of the Code of Criminal Procedure, 1973 is itself not 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 is not inclined to grant pre-arrest bail to the petitioner.

8. Accordingly, the application stands dismissed, both on merits as well as on the ground of being not maintainable.

9. However, in view of submission of learned counsel for the petitioner, it is observed 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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