

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.34480 of 2020

Arising Out of PS. Case No.-85 Year-2019 Thana- KORMA District- Sheikhpura

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Satish Kumar @ Gado Mahto, aged about 32 years, Male son of Late Ishwar Mahto, resident of Village- Murarpur, P.S.- Korma, District- Sheikhpura
... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Pankaj Kumar, Advocate
For the State : Mr. Abhay Kumar Roy, APP

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 13-04-2021

The matter has been heard *via* video conferencing.

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

3. The petitioner apprehends arrest in connection with Excise Case No. 394 of 2019 arising out Korma PS Case No. 85 of 2019 dated 17.11.2019, instituted under Sections 272, 273 of the Indian Penal Code and 30(a) (d) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the ‘Act’).

4. The allegation against the petitioner is that the police on specific information that he was in the business of preparing countrymade liquor, when went to the place, he was seen carrying sack on his head, but after leaving the sack, had



run away and from the same 10 litres countrymade liquor and 10 kg. *Gur* was recovered.

5. Learned counsel for the petitioner submitted that he has been named only on suspicion and has not been caught and there has also not been recovery from his house and that he has no criminal antecedent.

6. Learned APP submitted that 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, as the petitioner is alleged to have been involved in the business of manufacturing liquor and was also seen by the police party and had run away after leaving the recovered liquor.

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 the learned APP. Once the allegation in the FIR is that there was specific information with regard to the petitioner indulging in such business and is also alleged to have been seen by the police, though having managed to run away and from the materials he was carrying, there being recovery of liquor, *prima facie*, offence would be made out under the Act and, thus, the bar of Section 76(2) of the Act shall apply.



8. In the aforesaid background, the application stands disposed off as not maintainable.

(Ahsanuddin Amanullah, J)

J. Alam/-

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