

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.34474 of 2020

Arising Out of PS. Case No.-350 Year-2019 Thana- BIDUPUR District- Vaishali

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Bhanu Kumr @ Rahul Kumar Son of Sanjay Singh Resident of Village -
Dhabauli @ Dhobauli, P.S.- Bidupur, Distt.- Vaishali.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

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Appearance :

For the Petitioner : Mr.Manish Chandra Gandhi, Advocate

For the Opposite Party : Mr. Abhay Kumar Roy, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL ORDER

3 25-05-2021 Heard learned counsel for the petitioner and learned
counsel for the State via video conferencing.

2 The petitioner has filed the present
application for grant of pre-arrest bail in connection with
Bidupur P.S. Case No.350 of 2019 registered for the offence
punishable under Section 30(a) of the Bihar Prohibition and
Excise Amendment Act, 2018.

3. The case relates to recovery of 76 cartons
and 88 bottles of different brands and sizes containing 684 litre
illicit liquor from a pick-up van bearing Registration No.BR-
06GD-4493.

4. Learned counsel for the petitioner contended
that the petitioner has no concern with the alleged recovery of



illicit liquor from the pick-up van in question. He submits that the petitioner is not the person for whom the liquor was being carried on the pick-up van.

5. On the other hand, learned counsel for the State submitted that the petitioner is one of the named accused in the FIR. He submitted that when the police intercepted the pick-up van, the petitioner alighted from it and ran away. He contended that there is specific allegation that he is involved in trade of illicit liquor. He further contended that in view of Section 2 of Section 76 of the Bihar Prohibition and Excise Act, 2016 (for short 'the Act of 2016'), an application under Section 438 of the Code of Criminal Procedure could not be maintainable.

6. The Act, 2016 has been promulgated for enforcing, implementing and promoting complete prohibition of liquor and intoxicants in the territory of the State of Bihar and for matters connected therewith or incidental thereto.

7. The legislation was enacted to provide a uniform law relating to prohibition of liquor and intoxicant, levy of duties thereon and punishment for the violation of law in the State of Bihar.

8. Section 76 of the Act of 2016 provides that



all the offences under this Act shall be cognizable and non-bailable and provisions of the Code of Criminal Procedure shall apply. Sub-clause 2 of Section 76 of Act 2016 bars the application of Section 360 of Code of Criminal Procedure, 1973, Section 438 of Code of Criminal Procedure, 1973 and Probation of Offenders Act, 1958.

9. For the sake of convenience, Section 76 of the Act of 2016 is extracted hereinbelow:-

“76. Offences to be Cognizable and Non-Bailable. - (1) All offences under this Act shall be Cognizable and Non-Bailable and provisions of Code of Criminal Procedure, 1973 (Act 2 of 1974) shall apply. (2) Notwithstanding anything mentioned in subsection (1) above, nothing in Section 360 of Code of Criminal Procedure, 1973 (Act 2 of 1974), Section 438 of the Code of Criminal Procedure, 1973 (Act 2 of 1974) and Probation of Offenders Act 1958 (20 of 1958) shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under this Act.”

10. **In Ram Vinay Yadav vs. The State of Bihar [(2019) 2 PLJR 1089]**, one of the issues referred to the full bench for consideration and adjudication was “whether the



provisions of Section 438 Cr.P.C. continue to apply in spite of the bar created under Section 76 (2) of the Bihar Prohibition and Excise Act, 2016 and as to whether such an application under Section 438 Cr.P.C. for anticipatory bail is maintainable”?

11. The Full Bench after having considered the matter held that if the ingredients of the offence under the Act of 2016 are made out, an application for grant of pre-arrest bail would not be maintainable.

12. Regard being had to the statutory provisions prescribed under Section 76 of the Act of 2016, the ratio laid down by the full bench of this Court in **Ram Vinay Yadav (supra)**, since the ingredients of the offence punishable under Section 30(a) of the Act of 2016 are clearly attracted in the present case as against the petitioner, the application preferred under Section 438 of the Code of Criminal Procedure for grant of pre-arrest bail is not maintainable.

13. Accordingly, it is dismissed as not maintainable.

14. Since the court proceedings are being conducted through virtual mode, it is considered appropriate to adopt the following procedure for communication of the present order:-



- (i) The order, which has been dictated during the course of proceeding of the virtual court, shall be communicated to me electronically by the Joint Registrar-cum-Addl. PPS.
- (ii) The corrected copy of the order shall be transmitted by me to the Joint Registrar-cum-Addl. PPS electronically, which shall be treated to be an authentic copy of the order passed by this Court in the present proceeding.
- (iii) Hard copy of the order duly signed by me shall be preserved in my residential office for documentation and future use, if any.
- (iv) Let steps be taken by the Joint Registrar-cum-Addl. PPS/registry for up-loading of the present order without compromising with the norms of social distancing.

(Ashwani Kumar Singh, J)

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