

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 36575 of 2020**

Arising Out of PS Case No.-148 Year-2020 Thana- HUSSAINGANJ District- Siwan

Ajeet Kumar Yadav @ Ajeet Kumar Yadav, Gender-Male, aged about 24 years, Son of Late Yogendra Yadav @ Yogendra @ Pahlawan, Resident of Village-Gosopali, PS-Hussainganj, District-Siwan.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Javed Aslam, Advocate
For the State : Mr. Md. Aslam Ansari, APP

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT**

Date : 29-06-2021

The matter has been heard *via* video conferencing.

2. Heard Mr. Javed Aslam, learned counsel for the petitioner and Mr. Md. Aslam Ansari, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

3. The petitioner apprehends arrest in connection with Hussainganj PS Case No. 48 of 2020 dated 10.06.2020, instituted under Sections 272 and 273 of the Indian Penal Code and 30(a) and 41(i) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the 'Act').

4. The allegation against the petitioner is that from the joint house of his and his brother, 234 litres of liquor was recovered from near the staircase.



5. Learned counsel for the petitioner submitted that though as per the allegation, the recovery is from the house of the petitioner and his brother, but in the seizure list, it has been shown that the recovery is from the house of his brother, who is also co-accused, and not the petitioner. Learned counsel submitted that the petitioner and his brother are separate as there has been partition between them and the place from where recovery has been made belongs to his brother i.e., co-accused Sanjeet Kumar Yadav. It was further submitted that the petitioner has no criminal antecedent.

6. Learned APP submitted that the full brother of the petitioner has confessed and has also stated that both him and the petitioner were together in the business of liquor and most importantly, the recovery is from the joint house of the petitioner and his brother and, thus, such distinction of the place from which it has been recovered belonging to the other co-accused, is of no significance. It was further submitted that in the seizure list, as the house was joint, the name of only the brother has been mentioned, but that would not mean that the recovery was not from the house of the petitioner also, as the house was jointly owned by both the accused persons. Learned counsel submitted that in view of the allegation that recovery of liquor is from the house which also



belonged to the petitioner, the present application under Section 438 of the Code of Criminal Procedure, 1973 would not be maintainable due to 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 finds substance in the contention of learned APP.

8. Accordingly, the application stands dismissed, both on merits as also on the ground of non-maintainability

(Ahsanuddin Amanullah, J.)

P. Kumar

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