

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.37234 of 2020

Arising Out of PS. Case No.-245 Year-2020 Thana- BIBHUTIPUR District- Samastipur

Mina Devi (Female), aged about 45 years, Wife of Kailash Chaudhary
Resident Of Village - Singhiya Ghat, Police Station - Bibhutipur, District -
Samastipur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Mirityunjay Kumar, Advocate
For the State : Mr. Damodar Prasad Tiwary, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 16-07-2021

The matter has been heard *via* video conferencing.

2. Heard Mr. Mirityunjay Kumar, learned counsel for the petitioner and Mr. Damodar Prasad Tiwary, learned Additional Public Prosecutor (hereinafter referred to as the ‘APP’) for the State.

3. The petitioner apprehends arrest in connection with Vibhutipur PS Case No. 245 of 2020 dated 22.08.2020, instituted under Sections 272/2734 of the Indian Penal Code and 30(a) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the ‘Act’).

4. The allegation against the petitioner is that with regard to recovery made by the police of 5507.640 litres of



foreign liquor from one Truck, one Bolero pick-up, one Mahindra Scorpio and two motorcycles; one motorcycle was registered in the name of the petitioner, from which 17.280 litres of foreign liquor was recovered.

5. Learned counsel for the petitioner submitted that she is a lady aged 45 years and has absolutely no connection with such seizure as it cannot be expected and believed that she would be driving the motorcycle. It was submitted that because her husband lives outside, as the motorcycle was lying, she had given it to her neighbour, who had some work and if there has been misuse of the vehicle she should not be held responsible. It was submitted that the petitioner also does not have any other criminal antecedent. Learned counsel submitted that the owner of the Scorpio, namely, Ram Vinay Singh, from which there has been huge amount of recovery has been granted anticipatory bail by a coordinate bench by order dated 29.04.2021 in Cr. Misc. No. 39116 of 2020.

6. Learned APP submitted that the present petition is not maintainable for the reason that an offence is made out under the Act since admittedly, one of the motorcycles from which there has been recovery of liquor, belongs to the petitioner and once that is the position, the bar of Section 76(2)



of the Act would apply and the present petition seeking pre-arrest bail under Section 438 of the Code of Criminal Procedure, 1973 would not be maintainable. Learned APP further submitted that in the case of the owner of the Scorpio namely, Ram Vinay Singh, the Court had not considered the issue of maintainability, but in the present case such issue being raised with regard to the very maintainability in law of the present petition, the Court may consider the same before going into the factual merits of the case.

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. Once, as per the FIR, which is admitted, that from the motorcycle which belongs to the petitioner, there is recovery of liquor, an offence would, *prima facie*, be made out under the Act and, thus, bar of Section 76(2) of the Act with regard to maintainability of the present petition would come into play.

8. For reasons aforesaid, the petition stands dismissed as 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, preferably on the same day.

(Ahsanuddin Amanullah, J)

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