

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.36628 of 2020**

Arising Out of PS. Case No.-457 Year-2020 Thana- BANJARIA District- East Champaran

Sunil Kumar, age about 22 years, male, son of Harendra Mukhiya Resident of
Village- Chelalaha Kothi P.S.- Banjariya District -East Champaran.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Ms. Ranjana Srivastava, Advocate
For the State : Mr. Akbar Ali, APP

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

Date : 02-08-2021

The matter has been heard *via* video conferencing.

2. Heard Ms. Ranjana Srivastava, learned counsel for the petitioner and Mr. Akbar Ali, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

3. The petitioner apprehends arrest in connection with Banjariya (Turkolia) PS Case No. 457 of 2020 dated 11.07.2020, instituted under Sections 272/273/34 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 when the police on secret information that two people were going on motorcycle with wine, reached the place two persons riding a motorcycle were seen, who tried to run away and on chase they



left the motorcycle on the road and fled away and from the motorcycle 40 litres Indian *chulai* wine kept in a jute bag was recovered. It is alleged that the petitioner and the other person, namely, Munna Kumar were on the motorcycle involved in the wine business.

5. Learned counsel for the petitioner submitted that he has been falsely implicated and in fact he lives in Mumbai to earn his livelihood and was not even in the village at the relevant time. It was submitted that the petitioner has no other criminal antecedent.

6. On a query of the Court to learned counsel for the petitioner with regard to the ownership of the motorcycle which was seized and from which recovery has been made, learned counsel submitted that the motorcycle belonged to the petitioner but her argument was that it was taken by his friend and, thus, he was neither responsible nor was aware for what has been found on the motorcycle.

7. Learned APP submitted that as per the allegation, the motorcycle from which recovery has been made belonged to the petitioner and, thus, the present petition would not be maintainable in view of bar of Section 76(2) of the Act where an offence is made out under the Act.



8. 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.

9. Once there is recovery from the motorcycle of which the petitioner was the owner, and such fact being admitted, *prima facie*, an offence would be made out under the Act against the petitioner and, thus, the present petition seeking pre-arrest bail under Section 438 of the Code of Criminal Procedure, 1973 would not be maintainable.

10. In the aforesaid background, the petition stands dismissed as not maintainable.

(Ahsanuddin Amanullah, J)

Anjani/-

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