

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 36586 of 2020

Arising Out of PS Case No.-150 Year-2020 Thana- FATEHPUR District- Gaya

=====

Vikash Sao @ Viakas @ Vikas Saw @ Vikash Jobraaj Saw, aged about 24 years, Male, Son of Jobraaj Sao, Resident of Village- Gopi More, PS- Fatehpur, District- Gaya.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

=====

Appearance :

For the Petitioner/s : Mr. Sharda Nand Mishra, Advocate
For the State : Mr. Jharkhandi Upadhyay, APP

=====

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 29-06-2021

The matter has been heard *via* video conferencing.

2. Heard Mr. Sharda Nand Mishra, learned counsel for the petitioner and Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor (hereinafter referred to as the ‘APP’) for the State.

3. The petitioner apprehends arrest in connection with Fatehpur PS Case No. 150 of 2020 dated 10.07.2020, instituted under Sections 30(a), 32(2) of the Bihar Prohibition and Excise



Act, 2016 (hereinafter referred to as the 'Act') and 25(1-B)a, 26 and 35 of the Arms Act, 1959.

4. The allegation against the petitioner is that when the police on secret information that one pick-up van was carrying wine from Jharkhand, intercepted the same, four persons left the vehicle and tried to flee away, but three were caught and they have disclosed the name of the petitioner as being the 4th person who had run away and from the pick-up van, cartons of various liquor brands, totalling 204 litres has been recovered.

5. Learned counsel for the petitioner submitted that he has been falsely implicated by the police and that only on the statement of the three apprehended accused persons, he has also been implicated. It was submitted that there is nothing to connect him with the recovered wine and that he has clean antecedent.

6. Learned APP submitted that four persons were seen running away from the pick-up van and three were caught and all of them have named the petitioner as the 4th person who had fled away. It was submitted that there is no reason why the three persons who were caught would implicate the petitioner and most importantly, as to how they were aware of the full and correct description of the petitioner as the same has been noted in the FIR itself at the very first instance upon apprehension of the other



three co-accused. It was submitted that there is no cogent ground mentioned to even indicate that there would be false implication and also that if at all, it was not the petitioner who had run away, then why would the other three co-accused who were caught would try to save a person who was equally involved and together with them in the business of liquor. Further, it was submitted that the petition is also not maintainable due to bar of Section 76(2) of the Act, since the persons caught with the wine have named him and the police had also seen four persons running away and only three were caught, which clearly shows that it was the petitioner who was the 4th person and from the attending circumstances, at least, *prima facie*, a case is made out under the Act against the petitioner.

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 Court is not inclined to grant pre-arrest bail to the petitioner and the petition stands dismissed, both on merits as well as on the ground of non-maintainability.

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.

(Ahsanuddin Amanullah, J.)

P. Kumar

AFR/NAFR	
U	
T	

