

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 33986 of 2020**

Arising Out of PS Case No.-338 Year-2020 Thana- BEGUSARAI MUFFASIL District-
Begusarai

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Monu Kumar, aged about 22 years, Sex- Male, Son of Late Bachkun Singh,
Resident of Village- Akbarpur Puranidih, PS- Samho, District- Begusarai.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Bipin Kumar, Advocate
For the State	:	Mr. Md. Arif, APP

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

ORAL JUDGMENT

Date : 06-04-2021

The matter has been heard *via* video conferencing.

2. Heard Mr. Bipin Kumar, learned counsel for the petitioner and Mr. Md. Arif, learned Additional Public Prosecutor (hereinafter referred to as the ‘APP’) for the State.

3. The petitioner apprehends arrest in connection with Muffasil PS Case No. 338 of 2020 dated 08.07.2020, instituted under Sections 30(a) and 41(1) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the ‘Act’).

4. The allegation against the petitioner is that from his motorcycle, on search, there was recovery of 9.375 litres of foreign liquor.



5. Learned counsel for the petitioner submitted that the motorcycle was stolen for which he has filed an Informatory Petition before the Chief Judicial Magistrate, Begusarai and that he has no connection with the recovered liquor. It was further submitted that the petitioner has no criminal antecedent.

6. Learned APP raised a preliminary objection and submitted that the recovery is from the motorcycle of the petitioner, which is an admitted position. It was further submitted that only to create a defence, an Informatory Petition was filed before the learned Chief Judicial Magistrate, Begusarai as there is no provision of filing of any Informatory Petition. Further, it was submitted that the said Informatory Petition was also filed after lodging of the present case. Thus, learned APP submitted that the present application under Section 438 of the Code of Criminal Procedure, 1973 is not maintainable as there is bar to the same under 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. The recovery of liquor being from the motorcycle owned by the petitioner, *prima facie* offence is made out under the Act and, thus, the present application would not be maintainable.



8. Accordingly, the application stands disposed off as
not maintainable.

(Ahsanuddin Amanullah, J.)

P. Kumar

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