

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.37719 of 2020**

Arising out of PS. Case No.-12 Year-2020 Thana- GOVERNMENT OFFICIAL COMP.
District- Vaishali

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Raushan Kumar @ Raushan Kumar Rai (Male) aged about 20 years, S/o
Jhagru Rai R/o Village- Husenipur, P.S.- Tisieuta, District- Vaishali

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Abhinav Ashok, Advocate
For the State	:	Mr. Chandrasen Prasad Singh, APP

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

Date : 22-07-2021

The matter has been heard *via* video conferencing.

2. Heard Mr. Abhinav Ashok, learned counsel for the petitioner and Mr. Chandrasen Prasad Singh, learned Additional Public Prosecutor (hereinafter referred to as the ‘APP’) for the State.

3. The petitioner apprehends arrest in connection with C2A Case No. 12 of 2020 dated 15.01.2020, instituted under Section 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 police on secret information went to his field, from a pit 86.40 litres of liquor was recovered.



5. Learned counsel for the petitioner submitted that neither the petitioner was apprehended at the spot nor was he involved in such business. It was submitted that the field was an open field and the petitioner has no role or knowledge with regard to what was kept in his field and, thus, the said recovery cannot be said to be connected to the petitioner. It was submitted that the petitioner has no criminal antecedent and the name of the petitioner has been taken in the FIR due to enmity with the villagers.

6. Learned APP submitted that once there is recovery of liquor from the field owned by the petitioner, an offence is made out under the Act and, thus, the present petition under Section 438 of the Code of Criminal Procedure, 1973 would not be maintainable in view of bar of Section 76(2) of the Act. It was further submitted that the petitioner would have full opportunity to raise all issues and points available to him to rebut the allegation but the same has to be done at the stage of trial by adducing evidence before the Court below.

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, from the field which is owned by the petitioner, there is recovery of huge



amount of liquor, *prima facie*, an offence is made out under the Act and, thus, the present petition would not be maintainable due to bar of Section 76(2) of the Act.

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

(Ahsanuddin Amanullah, J)

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