

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 37174 of 2020

Arising Out of PS Case No.-218 Year-2020 Thana- GARDANIBAGH District- Patna

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Guddu Kumar, aged about 44 years, Male Son of Vishwanath Mukhiya @ Vishwanath Singh, Resident of Mohalla- Chitkohra, PS- Gardanibagh, District- Patna.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s	:	Mr. Uma Shankar Singh, Advocate
For the State	:	Mr. Md. Arif, APP

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 09-07-2021

The matter has been heard *via* video conferencing.

2. Heard Mr. Uma Shankar Singh, 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 Gardanibagh PS Case No. 218 of 2019 dated 15.04.2020, instituted under Sections 30(a)/34 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 information that he was selling liquor at a particular place, went there, the petitioner along with others managed to flee away and the police found a green bag which was searched in presence of two independent witnesses and 23 pouches of 200 ml.



each of countrymade liquor, totalling 4.60 liters was recovered and seized.

5. Learned counsel for the petitioner submitted that from the FIR itself, it would appear that the petitioner has been made an accused only on suspicion without there being any substantive evidence against him. It was submitted that the police received information at 10:00 AM from the Excise Department and thereafter, going to the place of occurrence at 3:10 PM itself shows that there was no urgency and they have just casually lodged the FIR. It was further submitted that when the police went at the spot, they saw a few persons running without naming anybody. Learned counsel submitted that the petitioner was made an accused earlier also in a case under the Act but in that case also there was no recovery from him and he was enlarged on anticipatory bail. Learned counsel further submitted that the police in a busy market place at about 3:00 PM could not find any independent witness is also unbelievable.

6. Learned APP submitted that the stand taken on behalf of the petitioner is erroneous. It was submitted that in the FIR itself, it is clearly written that the informant, who is a Police Officer was on patrolling duty on that day from 10:00 AM and not that the information received by him was at 10:00 AM. It was



submitted that in the FIR itself, it is written that at 3:10 PM, when he was at Gardanibagh Chauraha, the Officer In-charge, Gardanibagh PS had informed him that the control room of the Excise Department had passed information that the petitioner was selling liquor behind Ayush Fast Food. Further, it was submitted that the police swung into action immediately and in fact, after going to the place and identifying the petitioner, among others, when they fled away, the police had searched the place and recovered the liquor and the seizure list would indicate that the exercise was completed at 3.45 PM. Learned APP submitted that as far as the contention of learned counsel for the petitioner that there are no independent witnesses, the same has also been answered satisfactorily in the FIR itself where it has been stated that due to lock-down, there was nobody present to be made witness and that is why two persons from among the police party, had been made seizure list witnesses. Learned APP submitted that the specific information with name of the petitioner being communicated to the raiding party and the petitioner being a resident of the same police station, and also being identified by the raiding team, clearly shows that there has been proper identification of the petitioner, though he managed to flee away and was not caught, but the same would not mean that he was not



involved in the act. Further, it was submitted that the petitioner having been granted anticipatory bail in a previous matter under the Act and still continuing to indulge in such trade is a violation of the terms and conditions of such privilege and this itself would disentitle him to any indulgence in the present case. It was contended that once there has been identification, particularly of the petitioner, by the police team and from the place where he ran away, there is recovery of liquor, *prima facie*, it is sufficient to constitute an offence under the Act and, thus, the present petition would not be maintainable due to bar of Section 76(2) of the Act which prohibits an application under Section 438 of the Code of Criminal Procedure, 1973.

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. For reasons aforesaid, the present application stands dismissed, both on merits and also on the ground of non-maintainability.

(Ahsanuddin Amanullah, J.)

P. Kumar

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