

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 37147 of 2020

Arising Out of PS. Case No.-204 Year-2020 Thana- BANKA District-Bhagalpur

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Raja Janak Kumar Sinha, aged about 23 years, Gender-Male, son of Jaypal Kumar @ Jaypal Kumar Sinha, resident of Pramila Bhawan, Chhatrapati Talab Road, Kalabganj Aara Mill, Mirchak, P.S.-Mojahidpur, District-Bhagalpur

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Mukesh Kumar Jha, Advocate
For the State : Mr. Arvind Kumar Pandey, APP

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 06-07-2021

The matter has been heard *via* video conferencing.

2. Heard Mr. Mukesh Kumar Jha, learned counsel for the petitioner and Mr. Arvind Kumar Pandey, learned Additional Public Prosecutor (hereinafter referred to as the ‘APP’) for the State.

3. The petitioner apprehends arrest in connection with Banka PS Case No. 204 of 2020 dated 11.03.2020, 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 from his pick-up van, 675.900 litres of liquor, 25 bags of rice each containing 25 kgs., totaling 625 kgs. was recovered and the



driver managed to escape under cover of darkness.

5. Learned counsel for the petitioner submitted that he was not caught at the spot and he was not driving the pick-up van and even if there is recovery, he was neither aware of it nor is responsible for the same.

6. Learned APP submitted that the recovery is from the vehicle of which the petitioner is the owner and, thus, offence is made out under the Act. He submitted that once *prima facie*, an offence is made out under the Act, 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.

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 vehicle owned by the petitioner, there is recovery of huge quantity of liquor, an offence would be made out under the Act and, thus, the bar of Section 76(2) of the Act would come into play.

8. For reasons aforesaid, the petition stands dismissed.

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)

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