

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.37131 of 2020**

Arising Out of PS. Case No.-352 Year-2020 Thana- SIWAN MUFFASIL District- Siwan

Bittu Yadav, male, aged about 22 years, Son of Baldev Yadav Resident of
Village- Jiyay, P.S.- Siwan Muffasil, Distt- Siwan

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ajay Kumar Tiwary, Advocate
For the State : Mr. Arun Kumar Pandey, APP

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

Date : 08-07-2021

The matter has been heard *via* video conferencing.

2. Heard Mr. Ajay Kumar Tiwary, learned counsel for the petitioner and Mr. Arun Kumar Pandey, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

3. The petitioner apprehends arrest in connection with Siwan Muffasil PS Case No. 352 of 2020 dated 07.08.2020, instituted under Sections 272/273 of the Indian Penal Code and 30(a)/41(1) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the 'Act').

4. The allegation against the petitioner is that when the police on information that the petitioner was dealing in liquor went to his house, at the entrance, three motorcycles were there and four



persons tried to run away but one person was caught and from each of the three motorcycles, 72 litres of liquor was recovered and the person caught has taken the name of the petitioner specifically as the person who had provided the liquor.

5. Learned counsel for the petitioner submitted that there is no recovery from the conscious possession of the petitioner and whatever recovery is said to have taken place is from the three motorcycles which were parked outside his house with which he has no connection. It was submitted that the petitioner has no other criminal antecedent.

6. Learned APP submitted that the police had got specific information that in the house of the petitioner there was going to be delivery of liquor and when they went there, at the entrance of the house there has been recovery of three motorcycles having liquor. Thus, it was submitted that there is direct nexus of the recovered liquor to the petitioner, both because of prior information and the factum of recovery being made from the motorcycles found outside the main entrance of the house of the petitioner and also that the person caught has stated that it was the petitioner who had provided the liquor. Accordingly, it was submitted that the present petition also is not 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. Since the allegation, as per the FIR itself, does make out a *prima facie* case under the Act against the petitioner, bar of Section 76(2) of the Act would come into play.

8. For reasons aforesaid, the present petition stands dismissed as not maintainable.

(Ahsanuddin Amanullah, J)

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