

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.37124 of 2020

Arising out of PS. Case No.-144 Year-2019 Thana- FULKAHA District- Araria

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Gautam Nirala @ Gautam Viraji @ Gautam Biraji, Male, aged about 23 years, S/o Shiv Narayan Biraji @ Shivam R/o village- Achra, P.S.- Fulkaha, District- Araria

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Mrityunjay Kumar, Advocate
For the State : Mr. Jharkhandi Upadhyay, APP

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CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 02-07-2021

The matter has been heard *via* video conferencing.

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

3. The petitioner apprehends arrest in connection with Fulkaha PS Case No. 144 of 2019 dated 13.09.2019, instituted under Sections 223, 224 and 225 of the Indian Penal Code and 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 reached the house of co-accused Jalo Oraon, Lalu Kumar Yadav and petitioner were caught in inebriated state after having consumed liquor and on search from the house of Jalo Oraon, 4



litres of country-made liquor and from the pocket of Lalu Kumar Yadav one mobile set and from the pocket of the petitioner also a mobile set was recovered and that the petitioner was not able to give any satisfactory answer with regard to the recovered article and that the petitioner along with Lalu Kumar Yadav was arrested and put on the police vehicle, but at 4 PM near Ghurna More on the pitch road, co-accused is said to have jumped and steered the vehicle to the left and to avoid hitting persons sitting near the road, the driver applied brake and stopped the car and the mother of the co-accused Lalu Kumar Yadav had taken out the keys and thrown it and had opened the door of the police vehicle and had managed to set free Lalu Kumar Yadav and the petitioner.

5. Learned counsel for the petitioner submitted that he was not caught with any liquor and only on suspicion he was arrested by the police. It was further submitted that no recovery of liquor has been made from his possession and that the petitioner has no criminal antecedent.

6. Learned APP submitted that as per the FIR itself it is clear that the petitioner was caught in an inebriated state and from his possession a mobile phone was recovered and most importantly, even though the police had made him sit in the vehicle and he was being taken away, due to interference by the



family members of co-accused Lalu Kumar Yadav, the petitioner also had fled away from the police vehicle, which clearly indicates that he was guilty and to save himself had run away. Thus, learned APP submitted that once on the ground that the petitioner had consumed liquor he was arrested by the police initially, an offence is made out under the Act and the present application 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 that once the petitioner was caught having been found to have consumed liquor the same being an offence under the Act, the bar of Section 76(2) of the Act would come into play.

8. For the reasons aforesaid, the present application stands dismissed, both on merits as well as on the ground of non-maintainability.

(Ahsanuddin Amanullah, J)

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