

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No. 39371 of 2020**

Arising Out of PS. Case No.-100 Year-2020 Thana- TILAUTHU District- Rohtas

=====

Suman Paswan, aged about 34 years, Male, Son of Shailesh Paswan, Resident of Village- Uttar Patti Tilauthu, PS- Tilauthu, District- Rohtas at Sasaram.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. Babu Nandan Prasad, Advocate  
For the State : Mr. Satyendra Narayan Singh, APP

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

**Date : 23-08-2021**

The matter has been heard *via* video conferencing.

2. The case has been taken up out of turn on the basis of motion slip filed by learned counsel for the petitioner, which was allowed.

3. Heard Mr. Babu Nandan Prasad, learned counsel for the petitioner and Mr. Satyendra Narayan Singh, learned Additional Public Prosecutor (hereinafter referred to as the ‘APP’) for the State.

4. The petitioner apprehends arrest in connection with Tilauthu PS Case No. 100 of 2020 dated 20.08.2020, instituted under Section 30(a) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the ‘Act’).

5. The allegation against the petitioner and two other named and one unknown person is that when police on secret



information that they were carrying illegal *mahua* wine of 5 to 6 bags through the boat and had kept it on a tempo for carrying it to another place, the raiding party reached the spot, four persons fled away upon seeing the police and upon chase could not be caught due to high level of water in the river and three persons, including the petitioner, were identified by the local *Chowkidar* but the 4<sup>th</sup> was not identified and from the spot, from the tempo, 250 litres of illegal *mahua* wine was recovered.

6. Learned counsel for the petitioner submitted that due to enmity, the local *Chowkidar* has taken his name and he was neither involved in the trade of liquor nor was connected with the seized articles. Further, it was submitted that the petitioner has no other criminal antecedent. It was submitted that other two co-accused have been released on bail by the Court below.

7. Learned APP submitted that there cannot be any false implication of the petitioner due to enmity with the *Chowkidar* for the reason that no specific instance has been shown and most importantly, the fact that four persons are said to have fled away and only three persons have been identified by the *Chowkidar*, shows that he has honestly stated that he could not recognize the 4<sup>th</sup> person. Thus, it was submitted that once the petitioner is also one of the persons who had run away on seeing the police and



from the place there being huge recovery of liquor, an offence is made out under the Act, and 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 may also appear before the Court below and pray for bail as the other two named co-accused had also been granted bail by the Court below.

8. 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. The fact that four persons are said to have fled away, and the *Chowkidar* identifying only three persons and fairly stating that he could not identify the 4<sup>th</sup> person and there being recovery of huge quantity of liquor, *prima facie* an offence is made out under the Act against the petitioner. Thus, as has rightly been submitted by learned APP, the bar of Section 76(2) of the Act would apply.

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

**(Ahsanuddin Amanullah, J.)**

P. Kumar

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