

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.7716 of 2021**

Arising out of PS. Case No.-263 Year-2019 Thana- KHODAWANDPUR District- Begusarai

Ram Dayal Mahto, aged about 49 years, son of late Ram Udgar Mahto, Son of Late Ram Udgar Mahto Resident of Village - Fafaut, Ward No. 1, P.S.- Khodawandpur, District - Begusarai.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Ram Sumiran Rai, Advocate
For the State	:	Mr. Md. Arif, APP

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

Date : 17-08-2021

The matter has been heard *via* video conferencing.

2. Heard Mr. Ram Sumiran Rai, 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 Khodawandpur PS Case No. 263 of 2019 dated 06.12.2019, instituted under Sections 120(B), 414, 272 and 273/34 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 he was involved in the business of liquor and was connected to the seizure of 362.88 litres of liquor.



5. Learned counsel for the petitioner submitted that he is not named in the FIR and only during investigation, he has been implicated as one of the persons who had run away and from the two motorcycles of the sons of the petitioner, there has been recovery. It was submitted that the recovery has not been made from the house of the petitioner. Learned counsel submitted that one of the sons namely, Ajit Kumar, who is named in the FIR has been granted anticipatory bail by a co-ordinate Bench by order dated 07.07.2020 passed in Cr. Misc. No. 17378 of 2020.

6. Having regard to the aforesaid, the Court on 20.07.2021 had asked the learned APP to obtain the up-do-date legible photo copy of the entire case diary as also specific report with regard to the ownership of the orchard from which the recovery of liquor has been shown, from the Superintendent of Police, Begusarai.

7. Learned APP, from the case diary and the report, submitted that the letter of the Superintendent of Police, Begusarai dated 14.08.2021, discloses that the orchard from which the liquor has been recovered is owned by the petitioner and his three sons. Thus, it was submitted that from the attending circumstances an offence is made out under the Act and the present petition under



Section 438 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the ‘Code’) would not be maintainable.

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. Once, the recovery has been made from the orchard attached to the house of the petitioner, *prima facie*, an offence is made out under the Act and, thus, the bar of Section 76(2) of the Act would apply.

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

10. Interim protection granted to the petitioner under order dated 20.07.2021 stands vacated.

(Ahsanuddin Amanullah, J)

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