

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 8861 of 2021**

Arising Out of PS. Case No.-210 Year-2020 Thana- SIMRI District- Buxar

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Birendra Paswan @ Birendra Kumar Paswan, Male, aged about 20 years,
Son of Dharmdev Paswan @ Barhmdev Paswan, Resident of Village- Balihar
Paswan Tola, PS- Simari, District- Buxar.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar, Advocate
For the State : Mr. Anant Kumar No. 1, APP

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

Date : 29-07-2021

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 on 22.07.2021, which was allowed.

3. Heard Mr. Sanjay Kumar, learned counsel for the petitioner and Mr. Anant Kumar No. 1, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

4. The petitioner apprehends arrest in connection with Simri PS Case No. 210 of 2020 dated 26.07.2020, 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 is that when the police went on prior information near the brick-kiln of Mina Dubey, one motorcycle was seen coming towards them but on seeing the police, the rider turned the motorcycle and tried to run away but despite chase, he managed to escape leaving behind the motorcycle and on search, 60 litres of countrymade liquor was recovered from the said motorcycle and the petitioner was named as the person who had run away by the local *Chowkidar*.

6. Learned counsel for the petitioner submitted that the petitioner has been named only on suspicion by the local *Chowkidar* and has no other criminal antecedent.

7. Learned APP submitted that the police had gone on prior information and it was the petitioner who was seen coming on the motorcycle and on chase had left the motorcycle from which there is recovery of huge amount of countrymade liquor. Further, it was submitted that the local *Chowkidar* is the competent person to identify the persons of that locality and him having identified the petitioner as the sole person who was riding the motorcycle and had fled away, there is no reason to disbelieve him, at least at the present stage. Thus, it was submitted that once there is direct connection of the petitioner to the recovered liquor, the present petition under Section 438 of the Code of Criminal



Procedure, 1973 would not be maintainable due to bar of Section 76(2) of the Act.

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 local *Chowkidar* has identified the petitioner as the sole person who was riding the motorcycle and had fled away and from which there is recovery of 60 litres of countrymade liquor, an offence, *prima facie*, is made out under the Act and therefore, the present application would not be maintainable due to bar of Section 76(2) of the Act.

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

(Ahsanuddin Amanullah, J.)

P. Kumar

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