

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No. 36567 of 2020

Arising Out of PS Case No.-252 Year-2020 Thana- SOUR BAZAR District- Saharsa

Mithilesh Yadav, aged about 46 years, Male Son of Fekan Yadav, Resident of Village- Kabaila Chak, Ward No 10 Rampur, PS- Sour Bazar, District- Saharsa.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Pramod Mishra, Advocate
For the State	:	Mr. Jharkhandi Upadhyay, APP

CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT

Date : 09-06-2021

The matter has been heard *via* video conferencing.

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

3. Heard Mr. Pramod Mishra, learned counsel for the petitioner and Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

4. The petitioner apprehends arrest in connection with Sour Bazar PS Case No. 252 of 2020 dated 02.07.2020, instituted under Sections 272, 273 of the Indian Penal Code and 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 police on information that liquor was being kept behind a bush reached the spot with the local *Chowkidar*, a person was seeing carrying a carton but he left the carton and ran away and the *Chowkidar* had identified him to be the petitioner and from the carton, 45 bottles of one brand and 18 bottles of another brand liquor totalling 11.34 litres has been recovered.

6. Learned counsel for the petitioner submitted that in the FIR itself, it is mentioned that only on information that liquor was being kept behind the bushes, the police had gone but no name was taken and further that the *Chowkidar* being a local person of the village, due to rivalry, has named him at the behest of some other vested interest who has inimical term with the petitioner.

7. Learned APP submitted that the petitioner has a past history of two cases under the Excise Act against him of the year 2011 and 2012 and, thus, he was already in this business from before. Further, it was submitted that under the Act, if an offence is made out, any application under Section 438 of the Code of Criminal Procedure, 1973 would not be maintainable and, thus, in



the present case when the *Chowkidar* has specifically identified the petitioner and being a local is supposed to know the identity of persons in his area, *prima facie* offence is made out under the Act and thus, the bar of Section 76(2) of the Act would apply.

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. As the *Chowkidar* has identified the petitioner, obviously, *prima facie* an offence is made out under the Act and bar of section 76(2) of the Act would apply.

9. For reasons aforesaid, the application stands disposed off as not maintainable.

10. However, on submission of learned counsel for the petitioner, it is observed that in the event the petitioner appears before the Court below and prays for bail, the same shall be considered, on its own merits, in accordance with law, without being prejudiced by the present order.

(Ahsanuddin Amanullah, J.)

P. Kumar

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