

(2020) 11 PAT CK 0033

Patna High Court

Case No: Criminal Miscellaneous No. 25420 Of 2020

Chhathi Lal Chaudhary @
Chhotelal Chaudhary

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision: Nov. 6, 2020**Acts Referred:**

- Bihar Prohibition And Excise Act, 2016 - Section 30(a)
- Code Of Criminal Procedure, 1973 - Section 438

Hon'ble Judges: Ahsanuddin Amanullah, J**Bench:** Single Bench**Advocate:** Ajay Kumar Pandey, Humayou Ahmad Khan**Final Decision:** Dismissed

Judgement

1. The matter has been heard via video conferencing due to circumstances prevailing on account of the COVID-19 pandemic.

2. Heard Mr. Ajay Kumar Pandey, learned counsel for the petitioner and Mr. Humayou Ahmad Khan, learned Additional Public Prosecutor

(hereinafter referred to as the "APP"™) for the State.

3. The petitioner apprehends arrest in connection with CIII 132 of 2020 dated 17.06.2020, instituted under Section 30(a) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the "Act"™).

4. The allegation against the petitioner is that from the bush behind his house which is under his possession, 15 litres of crude country made liquor was recovered.

5. Learned counsel for the petitioner submitted that the petitioner is innocent and the recovery is not from inside the house and he is not aware or responsible for what was kept outside the house and clearly due to village and local politics somebody had planted it. Learned counsel submitted that the petitioner has no criminal antecedent.

6. Learned APP submitted that once the recovery of liquor is from the premises which was in possession of the petitioner, the same not being denied, prima facie an offence under the Act is made out and under such circumstances the law does not permit filing an application under Section 438 of the Code of Criminal Procedure, 1973 for grant of pre-arrest bail and, thus, the application itself is not maintainable. On merits also, it was submitted that the petitioner cannot feign ignorance with regard to what is kept in the bush outside his house but in his possession, as it is not believable that somebody would allow anybody to keep anything in an area which is under his possession.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, the Court finds substance in the objection of learned APP with regard to maintainability of the application.

8. Accordingly, the application stands dismissed as not maintainable.