

(2021) 02 PAT CK 0121**Patna High Court****Case No:** Criminal Miscellaneous No. 31704 Of 2020

Sagar Kumar

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision: Feb. 9, 2021**Acts Referred:**

- Bihar Prohibition And Excise Act, 2016 - Section 30(a), 76(2)
- Code Of Criminal Procedure, 1973 - Section 438

Hon'ble Judges: Ahsanuddin Amanullah, J**Bench:** Single Bench**Advocate:** Vinod Kumar, Jharkhandi Upadhyay**Final Decision:** Disposed Of**Judgement**

1. The matter has been heard via video conferencing.
2. Heard Mr. Vinod Kumar, learned counsel for the petitioner and Mr. Jharkhandi Upadhyay, learned In-charge Additional Public Prosecutor (hereinafter referred to as the "APP") for the State.
3. The petitioner apprehends arrest in connection with Excise Case No. 799 of 2019 dated 25.12.2019, 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 Mahendra pick-up van which was owned by him, 135 litres of foreign liquor was recovered.
5. Learned APP raised a preliminary objection and submitted that the application is not maintainable in view of bar of Section 76(2) of the Act which prohibits an application under Section 438 of the Code of Criminal Procedure, 1973 for grant of anticipatory bail. It was submitted that once the

ownership of the vehicle from which recovery is made is not in dispute, *prima facie* offence is made out under the Act.

6. Having considered the matter, the Court finds substance in the objection of learned APP. Once the vehicle from which recovery of liquor has been made is owned by the petitioner, offence under the Act is made out and, thus, the present application for grant of pre-arrest bail shall not be maintainable.

7. In view thereof, the application stands disposed off as not maintainable.

8. At this stage, learned counsel for the petitioner submitted that he will surrender and pray for bail which may be considered on its own merits.

9. Having regard to the aforesaid, the Court would only observe that if the petitioner surrenders before the Court below within four weeks from today and prays for bail, the same shall be considered on its own merits, in accordance with law, without being prejudiced by the present order.