

(2021) 04 PAT CK 0061

Patna High Court

Case No: Criminal Miscellaneous No. 32855 Of 2020

Arun Prasad @ Arun Ray

APPELLANT

Vs

State Of Bihar

RESPONDENT

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**Date of Decision:** April 9, 2021**Acts Referred:**

- Bihar Prohibition And Excise Act, 2016 - Section 30(a), 76(2)
- Code Of Criminal Procedure, 1973 - Section 100, 438

**Hon'ble Judges:** Ahsanuddin Amanullah, J**Bench:** Single Bench**Advocate:** Vijay Kumar Sinha, Mukeshwar Dayal**Final Decision:** Disposed Of

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**Judgement**

1. The matter has been heard via video conferencing.
2. Heard Mr. Vijay Kumar Sinha, learned counsel for the petitioner and Mr. Mukeshwar Dayal, learned Additional Public Prosecutor (hereinafter referred to as the "APP"™) for the State.
3. The petitioner apprehends arrest in connection with Special Case No. 3250 of 2020 arising out of Salimpur PS Case No. 111 of 2020 dated 20.04.2020, 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 his house, when the police went on specific information, though some persons fled away, which is alleged to include the petitioner, two litres of countrymade liquor and two litres of mahua wine were recovered.

5. Learned counsel for the petitioner submitted that he was not caught at the spot and further that no independent witnesses have signed on the seizure list which is also not in accordance with the requirement of Section 100 of the Code of Criminal Procedure, 1973 (hereinafter referred to as the "Code"). Learned counsel submitted that the petitioner has no criminal antecedent.

6. Learned APP submitted that as per the allegation, the recovery is from the house of the petitioner and for such purpose, the Court earlier had called for a report from the Senior Superintendent of Police, Patna as to whether the place from where recovery has been made, is within the premises owned by the petitioner. It was submitted that such report has been submitted in which in categorical terms it has been reported that the place from which liquor has been recovered is part of the premises of the petitioner and is fully in his control. Thus, learned counsel submitted that prima facie offence is made out under the Act which would thus bar the present application under Section 438 of the Code.

7. Having considered the matter, the Court finds substance in the contention of learned APP. Once the recovery is shown to be from the premises owned by the petitioner, an offence, prima facie, would be made out under the Act and, thus, the bar of Section 76(2) of the Act would apply.

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

9. However, on submission of learned counsel for the petitioner, it is observed that if the petitioner appears 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.