

(2021) 06 PAT CK 0010

Patna High Court

Case No: Criminal Miscellaneous No. 10240 Of 2021

Birendar Choudhari

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision: June 2, 2021**Acts Referred:**

- Bihar Prohibition And Excise Act, 2016 - Section 30(a), 32, 76(2)
- Code Of Criminal Procedure, 1973 - Section 438

Hon'ble Judges: Ahsanuddin Amanullah, J**Bench:** Single Bench**Advocate:** Ramakant Sharma, Rakesh Kumar Sharma, Vinod Shankar Modi**Final Decision:** Disposed Of

Judgement

1. The matter has been heard via video conferencing.
2. The matter 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. Ramakant Sharma, learned senior counsel along with Mr. Rakesh Kumar Sharma, learned counsel for the petitioner and Mr. Vinod Shankar Modi, learned Additional Public Prosecutor (hereinafter referred to as the "Act").
4. The petitioner apprehends arrest in connection with Aurangabad (T) PS Case No. 337 of 2020 dated 21.09.2020, 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 the bolero jeep which was seized by the police on 21.09.2020 with 1410 litres of countrymade liquor, was owned by him.

6. Learned counsel for the petitioner submitted that he is a resident of district of Palamu in the State of Jharkhand whereas seizure was made in the town of Aurangabad in the State of Bihar and the same was a commercial vehicle. It was submitted that the actual articles transported on his commercial vehicle are not known to the petitioner as it is the driver who is in-charge of the same and the petitioner was only getting the earning out of the use, but had no knowledge, much less, had consented to any illegal business or material being transported, including the countrymade liquor. It was submitted that seizure has not been in accordance with law as there are no independent witnesses to prove that the allegation of recovery from the said vehicle is correct since both the witnesses are constables who were members of the raiding party. Learned counsel submitted that the petitioner has no criminal antecedent.

7. Learned APP submitted that the present application is not maintainable in view of bar of Section 76(2) of the Act as an offence is made out. It was submitted that Section 32 of the Act deals with presumption with regard to commission of offence and the presumption is that the owner of the vehicle is also involved, unless proved otherwise. It was, thus, submitted that for proving it otherwise, the stage is trial, but for the present, as prima facie an offence is made out under the Act, the bar of Section 76(2) of the Act shall apply to the arrest of any person on an accusation of having committed an offence under 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. The language of Section 76(2) of the Act is very clear that an application under Section 438 of the Code of Criminal Procedure, 1973 shall not apply to any case involving the arrest of any person on an accusation of having committed an offence under the Act. Thus, there being an accusation, in terms of Section 32 of the Act, when it is admitted that the vehicle from which seizure has been made, belonged to the petitioner, clearly the bar of maintainability would apply.

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

10. However, in view of submissions of learned counsel for the petitioner, it is observed that if 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.