

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.27572 of 2017

Arising Out of PS.Case No. -148 Year- 2016 Thana -PARSABAZAR District- PATNA

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Ajay Mistry, Son of Late Shiv Nandan Mistry @ Brij Nandan Mistry,
resident of Village- Nepura, P.S.- Asthawa, District- Nalanda.

.... Petitioner

Versus

The State of Bihar.

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Amit Kumar Anand, Advocate

For the Opposite Party/s : Smt. Asha Devi, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL ORDER

2 07-07-2017

Heard learned counsel for the petitioner and learned
counsel for the State.

The petitioner seeks pre-arrest bail in connection
with Parsa Bazar P.S. Case No. 148 of 2016 registered for the
offences punishable under Sections 47 and 54 of the Bihar
Prohibition and Excise Act, 2016.

It is contended by the learned counsel for the
petitioner that the offence alleged has taken place prior to
enactment of Bihar Prohibition and Excise Act, 2016 and, hence,
the order passed by the learned Sessions Judge, Patna holding the
application under Section 438(2) of the Code of Criminal
Procedure to be not maintainable is bad in law.

I find substance in the submission of the learned
counsel for the petitioner. The Bihar Prohibition and Excise Act,



2016 has been enacted on 2nd October, 2016 whereas the F.I.R. in the present case was registered on 10.08.2016 for the alleged occurrence, which took place on the same day.

Since the alleged occurrence had taken place prior to the enactment of the Act of 2016, the finding of the learned Session Judge in the impugned order dated 09.05.2017 that the application was not applicable in view of the Section 76(2) of the Bihar Prohibition and Excise Act, 2016, is patently bad in law.

Accordingly, the impugned order dated 09.05.2017 passed by the learned Special Judge, Excise Court, Patna in A.B.P. No. 1658 of 2017 is set aside.

The matter is remanded back to the learned Special Judge, Excise Court, Patna. The learned Special Judge, Excise Court shall hear the application for bail afresh and pass order in accordance with law as early as possible, preferably within four weeks from the date of receipt/production of a copy of the order.

With the aforesaid observations and directions, the application is disposed of.

(Ashwani Kumar Singh, J.)

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