

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Miscellaneous No.25210 of 2017**

Arising Out of PS.Case No. -17 Year- 2015 Thana -GOVERNMENT OFFICIAL COMP. District-  
SITAMARHI

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Uma Shankar Manjhi son of Prasad Manjhi resident of village - Dhangartoli  
Patahi, Police Station - Bairgania, District - Sitamarhi.

.... .... Petitioner

Versus

The State of Bihar.

.... .... Opposite Party

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**Appearance :**

For the Petitioner/s : Mr. Anil Kumar, Advocate

For the Opposite Party/s : Smt. Pushpa Sinha, APP

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH**  
**ORAL ORDER**

2      01-07-2017                      Heard learned counsel for the petitioner and learned  
counsel for the State.

The petitioner seeks pre-arrest bail in connection with  
Complaint Case No. C2-17/2015 registered under Section 47(a)  
of the Excise Act.

It would be evident from the prosecution report that  
the alleged incident occurred on 30<sup>th</sup> September, 2015 whereas  
the new act, i.e. Bihar Prohibition and Excise Act, 2016 came  
into force with effect from 2<sup>nd</sup> October, 2016.

It is well settled in law that a penal law making the  
offence more stringent cannot have retrospective effect.



Apparently, the learned In-charge Additional Sessions Judge-II, Siwan has erred in law while rejecting the application for grant of pre-arrest bail of the petitioner vide order dated 13.04.2017 passed in C2-17/2015. He has rejected the application of the petitioner on the ground that in view of sub-section (2) of Section 76 of Bihar Prohibition and Excise Act, 2016, the application under Section 438 of the Code of Criminal Procedure would not be maintainable.

In that view of the matter, impugned order dated 13.04.2017 cannot be sustained. Accordingly, it is set aside.

Considering the fact that the recovery of incriminating articles is alleged to have been made on 30.09.2015, but the prosecution report was sent to the court on 07.12.2015, the petitioner named above is directed to be released on bail on furnishing bail bond of Rs.10,000/- ( Rupees ten thousand) with two sureties of the like amount each to the satisfaction of learned Chief Judicial Magistrate, Sitamarhi in Complaint Case No. C2-17/2015, subject to the conditions as laid down under Section 438 (2) of the Code of Criminal Procedure, in the event of his arrest or surrender before the court below within six weeks from today.

The Registry is directed to transmit a copy of the



order to the learned Additional Sessions Judge-II, Siwan for perusal.

**(Ashwani Kumar Singh, J.)**

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