

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.24397 of 2018

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/s

Versus

The State of Bihar.

.... Opposite Party/s

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Appearance :

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

For the Opposite Party/s : Mr. Jharkhandi Upadhyay, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL ORDER

2 05-09-2018 Heard learned counsel for the petitioner and learned
counsel for the State.

This application under Section 438 of the Code of Criminal Procedure (for short 'Cr.P.C') has been filed by the petitioner for grant of 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 Excise Act.

It is submitted by the learned counsel for the petitioner that the alleged recoveries were made prior to the enactment of Bihar Prohibition & Excise Act, 2016. Hence, an application under Section 438 of the Cr.P.C is maintainable. He contended that earlier under misconception of law the pre-arrest bail of the petitioner was rejected by the learned Session Judge in view of the



provisions prescribed under sub-section (2) of Section 76 of the Bihar Prohibition & Excise Act, 2016. Thereafter, the petitioners approached this Court vide Cr. Misc. No. 27572 of 2017 and after hearing the parties, this Court found substance in the submission made on behalf of the petitioner and held that since the alleged occurrence had taken place prior to amendment of the Excise Act, 2016, the finding of the learned Session Judge in the order dated 09.05.2017 that the application is not maintainable in view of the Section 76(2) of the Bihar Prohibition & Excise Act, 2016 is patently bad in law. He submitted that after saying so, this Court had remanded the matter to the learned Special Judge, Excise, Patna for hearing the application afresh and passing appropriate order. Thereafter, the petitioner pressed his application for grant of pre-arrest bail before the learned Special Judge, Excise, Patna. However, the said application has also been rejected vide order dated 28.02.2018. He contended that co-accused Ravi Singh @ Ravi Shankar Purvodaya had already been granted pre-arrest bail by the court below.

On the other hand, learned counsel for the State submitted that the case of the petitioner is not identical to that of co-accused Ravi Singh @ Ravi Shankar Purvodaya. There is no allegation that Ravi Singh was also involved in illegal possession



of liquor. The only thing on the basis of which he has been made accused is that he was owner of the market in which the petitioner and others, namely, Jairam Rai and Om Prakash Rai were tenants and it was they, who were carrying illicit liquor trade. He contended that huge quantity of illicit liquor was recovered from the shops run by the accused persons including the petitioner.

I have heard learned counsel for the parties and perused the record.

In view of recovery of 20 cartons of Royal Stag English wine contained in 244 bottles, I am not inclined to grant pre-arrest bail to the petitioner. The application is dismissed.

(Ashwani Kumar Singh, J)

Pradeep/Sneha

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