

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.5770 of 2018

Arising Out of PS.Case No. -235 Year- 2017 Thana -BARHARIA District- SIWAN

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Jitendra Sah, Son of Lalbabu Sah, R/o Village- Puraina Bazar, P.S.-
Barharia, District- Siwan.

.... Petitioner

Versus

The State of Bihar.

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar Tiwary, Advocate

For the Opposite Party/s : Md. Nazir Ansari, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL ORDER

2 09-02-2018 Heard learned counsel for the petitioner and learned
counsel for the State.

The petitioner seeks pre-arrest bail in connection
with Barharia P.S. Case No. 235 of 2017 registered under
Sections 272, 273 read with 34 of the Indian Penal Code and
Sections 35A, 35B and 36 of the Bihar Excise Amendment Act,
2016.

Section 76(1) of the Bihar Prohibition and Excise
Act, 2016 stipulates that all offences under this Act shall be
cognizable and non-bailable. Its sub-section (2) stipulates that
section 438 of the Code of Criminal Procedure shall not apply to



the offences under the Excise Act.

Keeping in mind the allegations made in the F.I.R. and the statutory bar to grant of pre-arrest bail to those booked under the Bihar Prohibition and Excise Act, 2016, in my considered opinion, an application under Section 438 of the Code of Criminal Procedure in the present matter is not maintainable.

Thus, the petition is dismissed as not maintainable.

In case the petitioner surrenders and seeks bail, the learned Special Judge shall be required to dispose of the same on merits taking into consideration the observations made by this Court in the matter of **Ashok Sahani vs. State of Bihar [(2017) 3 PLJR 632]**.

(Ashwani Kumar Singh, J.)

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