

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.11698 of 2018

Arising Out of PS.Case No. -43 Year- 2017 Thana -BARH District- PATNA

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Anita Devi, age about 36 years, wife of Late Devnandan Chaudhary @
Devu Chaudhary, resident of village- Gulab Bagh, Naya Tola, P.O. + P.S.-
Barh, Patna.

.... Petitioner/s

Versus

The State of Bihar.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Rudra Deo, Advocate
: Mr. Anurag Kumar, Advocate
: Mr. Abhay Kumar, Advocate
For the State : Mr. Sri Mritunjay Kumar Nirala, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR
SINGH
ORAL ORDER

2 11-04-2018 Heard learned counsel for the petitioner and learned
counsel for the State.

The petitioner has renewed his prayer for grant of pre-arrest bail in connection with Barh P.S. Case No.43 of 2017 registered for the offence punishable under Section 30(a) of the Bihar Prohibition and Excise Act, 2016 (for short 'the Act'). His earlier application for grant of pre-arrest bail was disposed of as not maintainable vide order dated 13.07.2017 passed in Cr. Misc. No.32399 of 2017.

From perusal of the first information report, it would appear that on confidential information received by the police, a



raid was conducted in her house. In course of search, eighty one pouches of 200 ml. country made wine contained in a plastic bag manufactured in Jharkhand were seized. It is also alleged that the petitioner is involved in sell of illicit wine in the locality.

Learned counsel for the petitioner submitted that the petitioner has falsely been implicated in this case and nothing was recovered from her conscious possession. He submitted that there is no material to show that she was involved in trade of illicit liquor.

Learned counsel for the State opposed the grant of pre-arrest bail on the ground of maintainability and also on the ground that there is no fresh material to reconsider the pre-arrest bail application.

Sub Section (2) of Section 76 of the Act reads as under:-

“76. Offences to be Cognizable and Non-Bailable.-

(1) x x x x x x x x x

(2) Notwithstanding anything mentioned in sub-section (1) above, nothing in Section 360 of Code of Criminal Procedure, 1973 (Act 2 of 1974), Section 438 of Code of Criminal Procedure, 1973 (Act 2 of 1974) and Probation of Offenders Act, 1958 (20 of 1958) shall apply in relation to any case involving the arrest of any person on an



accusation of having committed an offence under this Act.”

In view of the statutory bar to an application under Section 438 of the Code of Criminal Procedure in case an offence under the Act is made out, I am of the considered opinion that the instant application is not maintainable as the allegation made in the first information report clearly attracts ingredients of the offence punishable under Section 30(a) of the Act.

Accordingly, the application is dismissed as not maintainable.

(Ashwani Kumar Singh, J)

Md.S./-

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