

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.9453 of 2018

Arising Out of PS.Case No. -79 Year- 2017 Thana -MASRAKH District- SARAN

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1. Ashok Sah @ Ashok Kumar Gupta Son of Yogendra Sah Resident of
Village- Dumarsan Fardahiyan, Police station- Mashrakh , District- Saran
(Chapra).

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Sachida Nand Rai

For the Opposite Party/s : Mr. Sri Panchanand Pandit

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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 Mashrakh P.S.Case No. 79 of 2017 registered under Sections 272, 273 of the Indian Penal Code and Sections 30, 30(a), 38 and 41 of the Bihar Prohibition and Excise Act, 2016, which was earlier disposed of as not maintainable vide order dated 07.07.2017 passed in Cr.Misc. No. 26283 of 2017 keeping in mind the statutory provisions prescribed under sub-section (2) of Section 76 of the Bihar Prohibition and Excise Act, 2016.

Learned counsel for the petitioner submitted that the petitioner has become victim of highhandedness of police and search and seizure of liquor is false.



Be that as it may, from perusal of the FIR it would appear that huge quantity of illicit liquor was recovered from the house of the petitioner. It is also alleged that the petitioner used to sell liquor to customers illegally. The allegations made in the FIR clearly attract the ingredients of the offences punishable under the Bihar Prohibition and Excise Act, 2016.

Sub-section (2) of Section 76 of the Bihar Prohibition and Excise Act, 2016 reads as under :-

“**76 (2)** Notwithstanding anything mentioned in subsection (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 created under sub-section (2) of Section 76 of the Bihar Prohibition and Excise Act, 2016, in my considered opinion, the present application under Section 438 of the Code of Criminal Procedure is not maintainable. It is dismissed accordingly.

(Ashwani Kumar Singh, J)

Pradeep/-

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