

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Miscellaneous No.5588 of 2018**

Arising Out of PS.Case No. -143 Year- 2017 Thana -TRIVENIGANJ District- SUPAUL

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1. Shambhu Chaudhary S/o Asharfi Chaudhary, Resident of Village-Jagarpur, Police Station-Supaul, District-Supaul.

.... .... Petitioner/s

Versus

1. The State of Bihar

.... .... Opposite Party/s

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**Appearance :**

For the Petitioner/s : Mr. Rajiva Ranjan

For the Opposite Party/s : Mr. Sri Brajendra Nath Pandey

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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 Tribeniganj P.S.Case No. 143 of 2017 registered under Sections 30(a) and 56(d) of the Bihar Prohibition and Excise Act, 2016. The earlier application for grant of pre-arrest bail of the petitioner was rejected as not maintainable by this Court vide order dated 20.07.2017 passed in Cr.Misc. No. 28441 of 2017 on the ground that in view of the provisions prescribed under sub-section (2) of Section 76 of the Bihar Prohibition and Excise Act, 2016 the application under Section 438 of the Code of Criminal Procedure is not maintainable.

Learned counsel for the petitioner submitted that from



the FIR it would be evident that when the alleged search and seizure was made the petitioner was not in the vehicle in question. He submitted that in any view of the matter, his application for grant of pre-arrest bail is maintainable.

On the other hand, learned counsel for the State submitted that the petitioner is the owner of Tata Indica car bearing registration no. BR-11H/4692 from which huge quantity of illicit liquor was recovered and the allegation is that the petitioner is involved in sale of illicit liquor. He submitted that the allegation made in the FIR do attract the ingredients of the offences punishable under the Bihar Prohibition and Excise Act, 2016 and in view of sub-section (2) of Section 76 of the Bihar Prohibition and Excise Act, 2016 the application preferred under Section 438 of the Code of Criminal Procedure would not be maintainable.

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

It would be manifest from the FIR and the seizure list that huge quantity of liquor was recovered from the vehicle of which the petitioner is alleged to be the owner. It has been alleged that the owner and the driver are responsible for possessing illicit liquor which has been brought from neighbouring State. The



allegations would certainly constitute the offences alleged. The provisions prescribed under sub-section (2) of Section 76 of the Bihar Prohibition and Excise Act, 2016 clearly states that notwithstanding anything mentioned in subsection (1), nothing in Section-360 of Code of Criminal Procedure, 1973, Section 438 of Code of Criminal Procedure, 1973 and Probation of Offenders Act 1958 shall apply in relation to any case involving the arrest of any person on an accusation of having committed an offence under the Act.

In view of the nature of allegation and the statutory bar created under sub-section (2) of Section 76 of the Bihar Prohibition and Excise Act, 2016, I am of the considered opinion that the instant application preferred under Section 438 of the Code of Criminal Procedure is not maintainable. The application is accordingly dismissed.

**(Ashwani Kumar Singh, J)**

Pradeep/-

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