

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.1009 of 2018

Arising Out of PS.Case No. -320 Year- 2017 Thana -PIRBAHOR District- PATNA

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Amarjeet Kumar S/o Nand Kishor Prasad Resident of Bihari Shao Lane,
Bankipur, P.S. - Pirbahore, District - Patna.

.... Petitioner

Versus

The State of Bihar. Opposite Party

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Appearance :

For the Petitioner/s : Mr. Ram Shankar Das, Advocate

For the Opposite Party/s : Mr. Parmanand Kumar, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL ORDER

2 18-01-2018 Heard learned counsel for the petitioner and learned
counsel for the State.

The petitioner seeks pre-arrest bail in connection
with Pirbahore P.S. Case No. 320 of 2017 registered under
Sections 419, 420, 467, 468, 120B of the Indian Penal Code and
Sections 27(d), 28, 28(a) and 36 AC of the Drugs and Cosmetics
Act, 1940.

It is submitted by the learned counsel for the
petitioner that in view of Section 32 read with Section 22 of the
Drugs and Cosmetics Act, 1940, the institution of the FIR of the
present case is without jurisdiction. He submitted that the



offences punishable under the penal code are not attracted in the background of the allegations made in the FIR and the police is not empowered to register any FIR under the Drugs and Cosmetics Act, 1940 to investigate the same so as to submit charge-sheet under Section 173(2) of the Code of Criminal Procedure. In support of his submission, he has placed reliance on the decision of this Court in **Hindustan Lever Ltd. vs. State of Bihar and Ors. [1997 BLJ 899]** and an unreported judgment dated 21.01.2011 passed by a Division Bench of this Court in the matter of **Om Prakash Sah vs. State of Bihar (Cr. Misc. No.808 of 1998)**. He has also placed reliance on the judgment of this Court in **M/s Torque Pharmaceuticals Pvt. Ltd. & Anrs. Vs. State of Bihar & Ors. [(2015) 3 PLJR 660]**.

Learned counsel for the State opposed the application for grant of pre-arrest bail to the petitioner. He submitted that the issue raised by the petitioner regarding maintainability of the FIR is not to be seen in the matter of an application under Section 438 of the Cr. P.C. and such matter can only be determined by this Court in exercise of powers conferred under Section 482 of the Cr. P.C. or under Article 226 of the Constitution of India.



Be that as it may, regard being had to the facts of the case and the arguments advanced on behalf of the petitioner in the event of arrest or surrender in the court below within six weeks from today, he is directed to be released on bail on furnishing bail bond of Rs. 10,000/- (rupees ten thousand) with two sureties of the like amount each to the satisfaction of the learned Chief Judicial Magistrate, Patna in connection with Pirbahore P.S. Case No. 320 of 2017 subject to the conditions as laid down under Section 438(2) Cr. P.C.

(Ashwani Kumar Singh, J.)

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