

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.5591 of 2018

Arising Out of PS.Case No. -271 Year- 2017 Thana -MALSALAMI District- PATNA

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1. Mahesh Das S/o Rameshwar Das
2. Goyan Das S/o Gabar Das
3. Kishan Rai Son of Hazari Rai
4. Ganesh Das S/o Rajendra Rai, All Resident of Mohalla Kauakhoh, P.S.-
Chowk, District-Patna.

.... Petitioner/s

Versus

1. The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Vinay Kumar

For the Opposite Party/s : Mr. Sri Rajendra Singh Shastriji

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL ORDER

2 08-02-2018 Heard learned counsel for the petitioner and learned
counsel for the State.

The petitioner seeks pre-arrest bail in connection with Malsalami P.S.Case No. 271 of 2017 registered under Sections 272 and 273 of the Indian Penal Code and Section 30(a) of the Bihar Prohibition and Excise 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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