

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.19414 of 2018**

Arising Out of PS.Case No. -181 Year- 2017 Thana -GOVERNMENT OFFICIAL COMP. District-  
SIWAN

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Ramesh Chaudhary @ Ramesh Yadav son of Shivaji Chaudhary, resident of  
village- Ramdevnagar, P.O.- Siwan, P.S.- Mahadeva, O.P., District- Siwan.

.... .... Petitioner/s

Versus

The State of Bihar

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

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**Appearance :**

For the Petitioner/s : Mr. Dhananjay Kumar Shahi, Advocate

For the State : Mr. Md. Ashlam Ansari, APP

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**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH**

**ORAL JUDGMENT**

**Date: 19-09-2018**

Heard learned counsel for the petitioner and learned  
counsel for the State.

2. This application under Section 438 of the Code of  
Criminal Procedure, 1973 (for short 'the Cr.P.C.') has been filed by  
the petitioner for grant of pre-arrest bail in connection with Siwan  
Case No.C-III-181 of 2017 registered for the offence punishable  
under Section 30(a) of the Bihar Prohibition and Excise Act, 2016 (for  
short 'the Act'). Similar prayers made by the petitioner have already  
been rejected twice by this Court vide orders dated 13.07.2017 and  
30.10.2017 passed in Cr. Misc. No.31938 of 2017 and Cr. Misc.  
No.47825 of 2017 respectively.

3. Renewing the prayer for grant of pre-arrest bail for



third time, learned counsel for the petitioner submitted that the allegation made in the complaint would not attract the ingredients of any offence against the petitioner under the Act, as no incriminating material was recovered from his conscious possession.

**4.** On the other hand, learned counsel appearing for the State submitted that there is no merit in the application of the petitioner. The prayer for grant of pre-arrest bail to the petitioner has already been rejected twice by this Court holding that the application under Section 438 of the Cr.P.C. would not be maintainable in view of Sub Section (2) of Section 76 of the Act.

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

**6.** The case was instituted on the basis of a prosecution report filed in the court of Special Judge, Siwan by one Manoj, a Sub-Inspector of Excise Department. In his report, he has alleged that on 12.04.2017, at 9.50 p.m., a raid was conducted by the officials of the Excise Department in the village Mahadeva at Ramdeo Nagar Chowk, Siwan and huge quantity of country made and foreign liquor was recovered. Co-accused Indal Yadav was arrested from the place of occurrence itself whereas the petitioner managed to escape on seeing the officials of the Excise Department.

**7.** On the basis of aforesaid allegations, a complaint case



was instituted under Section 30(a) of the Act against the petitioner and Indal Yadav.

**8.** The Act was enacted to enforce, implement and promote complete prohibition of liquor and intoxicants in the territory of the State of Bihar. Since huge quantity of liquor was recovered and seized by the Excise officials and allegation has been made that at the time of raid somehow or the other the petitioner managed to escape whereas, another accused Indal Yadav was apprehended, by no stretch of imagination it can be said that no offence under the Act is made out. Apparently, ingredients of Section 30(a) of the Act are attracted.

**9.** Sub-section (1) of Section 76 of the Act stipulates that all offences under the Act shall be cognizable and non-bailable and provisions of Cr.P.C. (Act 2 of 1974) shall apply.

**10.** Sub-section (2) of Section 76 of the Act stipulates that notwithstanding anything mentioned in Sub-section (1) of Section 76 of the Act, nothing in Section 360 of the Cr.P.C. (Act 2 of 1974), Section 438 of the Cr.P.C. (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.

**11.** Since an offence under Section 30(a) of the Act is clearly made out, in view of the provisions prescribed under Sub-



section (2) of Section 76 of the Act, an application for grant of pre-arrest bail under Section 438 of the Cr.P.C. would not be maintainable.

**12.** In that view of the matter, on earlier occasions this Court had held that under Section 438 of the Cr.P.C. preferred by the petitioner was not maintainable.

**13.** The instant application has again been filed on the same ground under Section 438 of the Cr.P.C. I am of the considered opinion that the repeated applications being filed by the petitioner under Section 438 of the Cr.P.C. are not only ill advised but also an abuse of the process of the court.

**14.** Accordingly, the application for grant of pre-arrest bail to the petitioner is rejected.

**(Ashwani Kumar Singh, J)**

Md.S./-

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