

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.5696 of 2018

Arising Out of PS.Case No. -238 Year- 2017 Thana -BANIAPUR District- SARAN

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Ankit Upadhyay, Son of Rajesh Upadhyay Resident of Village-Harachpura
ke Tola, P.S. Baniyapur, District-Saran.

.... Petitioner

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Dr. Alok Kumar Sinha, Advocate

For the Opposite Party/s : Sri Rajeev Nayan, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL ORDER

2 09-02-2018 Heard learned counsel for the petitioner and

learned counsel for the State.

The petitioner seeks pre-arrest bail in connection
with Baniapur P.S. Case No.238 of 2017 registered under
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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