

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.22033 of 2020

Arising Out of PS. Case No.-522 Year-2019 Thana- MOTIHARI MUFASIL District- East
Champaran

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Khalifa Mukhia S/O Jai Ram Mukhia R/O Village - Hasuaha, P.S. - Muffasil,
District - East Champaran.

... .. Petitioner

Versus

The State Of Bihar

... .. Opposite Party

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Appearance :

For the Petitioner : Mr.Karandeep Kumar, Advocate
For the Opposite Party : Smt. Nirmala Kumari, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL ORDER

2 19-08-2020 Filing through email of the present application has

been accepted in view of the out-break of COVID-19 Pandemic

and has been posted before me for hearing through video

conferencing.

2. The application is apparently not in

accordance with the provisions prescribed under the Patna High

Court Rules, which do not contemplate filing of application

through email. Inspite of that, considering the extra-ordinary

situation, filing of the present application has been allowed

through email.

3. Considering the situation prevailing, the

Court has considered, for the present, to ignore the deficiency in

filing of the application.



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

5. The petitioner has filed the present application for grant of pre-arrest bail in connection with Motihari (Muffasil) P.S. Case No.522 of 2019 registered for the offence punishable under Sections 272 and 273 of the Indian Penal Code and 30(a) of the Bihar Prohibition and Excise Act, 2016 (for short 'the Act of 2016').

6. The Act of 2016 has been promulgated for enforcing, implementing and promoting complete prohibition of liquor and intoxicants in the territory of the State of Bihar and for matters connected therewith or incidental thereto.

7. The legislation was enacted to provide a uniform law relating to prohibition of liquor and intoxicant, levy of duties thereon and punishment for the violation of law in the State of Bihar.

8. Section 76 of the Act of 2016 provides that all the offences under this Act shall be cognizable and non-bailable and provisions of the Code of Criminal Procedure shall apply. Sub-clause 2 of Section 76 of Act 2016 bars the application of Section 360 of Code of Criminal Procedure,



1973, Section 438 of Code of Criminal Procedure, 1973 and Probation of Offenders Act, 1958.

9. For the sake of convenience, Section 76 of the Act of 2016 is extracted hereinbelow:-

“76. Offences to be Cognizable and Non-Bailable. - (1) All offences under this Act shall be Cognizable and Non-Bailable and provisions of Code of Criminal Procedure, 1973 (Act 2 of 1974) shall apply. (2) Notwithstanding anything mentioned in subsection (1) above, nothing in Section 360 of Code of Criminal Procedure, 1973 (Act 2 of 1974), Section 438 of the Code of Criminal Procedure, 1973 (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.”

10. **In Ram Vinay Yadav vs. The State of Bihar [(2019) 2 PLJR 1089]**, one of the issues referred to the full bench for consideration and adjudication was “whether the provisions of Section 438 Cr.P.C. continue to apply in spite of the bar created under Section 76 (2) of the Bihar Prohibition and Excise Act, 2016 and as to whether such an application under Section 438 Cr.P.C. for anticipatory bail is maintainable”?



11. The Full Bench after having considered the matter held that if the ingredients of the offence under the Act of 2016 are made out, an application for grant of pre-arrest bail would not be maintainable.

12. Regard being had to the statutory provisions prescribed under Section 76 of the Act of 2016, the ratio laid down by the full bench of this Court in **Ram Vinay Yadav (supra)**, since the ingredients of the offence punishable under Section 30(a) of the Act of 2016 are clearly attracted in the present case as against the petitioner, the application preferred under Section 438 of the Code of Criminal Procedure for grant of pre-arrest bail is not maintainable.

13. Accordingly, it is dismissed as not maintainable.

14. In case the petitioner surrenders and seeks bail under Section 439 of the Code of Criminal Procedure, the same should be considered and disposed of on merits without being prejudiced in any manner by this order.

15. Since the court proceedings are being conducted through virtual mode and normal court functioning has not been restored till date, it is considered appropriate to adopt the following procedure for communication of the present



order:-

- (i) The order, which has been dictated during the course of proceeding of the virtual court, shall be communicated to me on my email by the Senior Secretary.
- (ii) The corrected copy of the order shall be transmitted by me from my email id to the Senior Secretary, which shall be treated to be an authentic copy of the order passed by this Court in the present proceeding.
- (iii) Hard copy of the order duly signed by me shall be preserved in my residential office for documentation and future use, if any.
- (iv) Let a copy of the order be sent to Mr. Karandeep Kumar, learned counsel for the petitioner also on his email.
- (v) Let steps be taken by the Senior Secretary/registry for up-loading of the present order without compromising with the norms of social distancing.

(Ashwani Kumar Singh, J)

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