

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.23500 of 2021

Arising Out of PS. Case No.-39 Year-2020 Thana- PIYAR District- Muzaffarpur

=====

Sogarath Sahni @ Ram Sowarath Sahni, Son of Balchand Sahi, Resident of
Village-Bandra, P.S.- Pear, District- Muzaffarpur.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

=====

Appearance :

For the Petitioner : Mr. Mazharul Hassan, Advocate
For the Opposite Party : Mr. A.G.

=====

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL ORDER

2 27-05-2021 Heard learned counsel for the petitioner and

learned counsel for the State via video conferencing.

2. The petitioner seeks pre-arrest bail in

connection with Pear P.S. Case No.39 of 2020 registered under

Sections 272, 273, 120B of the Indian Penal Code and Sections

30(a), 33, 34 and 36 of the Bihar Prohibition and Excise Act,

2016.

3. It is submitted by the learned counsel for the

petitioner that co-accused Bhagwan Lal Sahni has been granted

pre-arrest bail by a co-ordinate Bench of this Court vide order

dated 12.01.2021 passed in Cr. Misc. No.23636 of 2020.

4. The Bihar Prohibition and Excise Act, 2016

(for short ‘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.

5. 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.

6. 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.

7. 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."

8. **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"?

9. 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.

10. In view of the ratio laid down by the full bench in **Ram Vinay Yadav** (supra) as also in view of sub-section (2) of Section 76 of the Act, this Court is bound to hold that the application preferred under Section 438 of the Code of Criminal Procedure is not maintainable, as the ingredients of the offence punishable under Sections 30(a), 33, 34 and 36 of the Act are clearly attracted.



11. Accordingly, the application is dismissed as not maintainable.

12. 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 electronically by the Joint Registrar-cum-Addl. PPS.
- (ii) The corrected copy of the order shall be transmitted by me to the Joint Registrar-cum-Addl. PPS electronically, 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 steps be taken by the Joint Registrar-cum-Addl. PPS/registry for up-loading of the present order without compromising with the norms of social distancing.

(Ashwani Kumar Singh, J.)

sanjeet/-

U		T	
---	--	---	--

