

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.12348 of 2022

Arising Out of PS. Case No.-216 Year-2021 Thana- KUTUMBA District- Aurangabad

SANTOSH KUMAR @ SANTOSH KUMAR YADAV Son of Laxman Yadav
Resident of Village - Amba Shahi, P.s.- Kutumba, Distt.- Aurangabad.

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Bhaskar Shankar

For the Opposite Party/s : Mr.Md. Iftekhar Mahmood

**CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR
PANDEY**

ORAL ORDER

2 17-09-2022 The learned counsel for the petitioner is directed to
remove all the defects pointed out by the office within one month.

Heard the learned counsel for the petitioner as well as
Additional Public Prosecutor for the State.

The petitioner apprehends his arrest in connection with
Kutumba P.S. Case No. 216 of 2021, registered for the offence
punishable under section 30 (a) of the Bihar Prohibition and
Excise Act.

The learned counsel for the petitioner has submitted that
the petitioner has not been arrested at the spot, nothing was
recovered from his possession, he is a person of clean antecedent
and his name has been figured in the statement of the person, who
concealed his name in the FIR.

So far as the maintainability of the bail petition is



concerned, Section 76 (2) of the Bihar Prohibition and Excise Act, 2016 makes an explicit embargo on entertaining the application under Section 438 of the Cr.P.C.

Since the provision of Section 438 of the Cr.P.C. is not applicable in respect of offences under the Bihar Prohibition and Excise Act, 2016, as such, this anticipatory bail application is not maintainable.

If the petitioner surrenders and makes a prayer for regular bail, that shall be disposed of on the same day. The learned court below may take notice of the fact that the petitioner of a person of clean antecedent and he is even not owner of the vehicle wherefrom the alleged liquor was recovered.

Office shall ensure that all defects are removed by the petitioner within the stipulated time mentioned hereinabove, failing which, the matter shall be brought to the notice of this Court.

(Nawneet Kumar Pandey, J)

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