

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.28950 of 2021

Arising Out of PS. Case No.-330 Year-2020 Thana- MALSALAMI District- Patna

SUBODH KUMAR S/o Ram Chandra Prasad, Resident of Chhoti Pahari,
Gulzarbagh, P.S.- Agamkuan, District- Patna.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Rajesh Mohan

For the Opposite Party/s : Mr. Shailendra Kumar

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

ORAL ORDER

3 01-02-2022 Heard the learned counsel for the petitioner as well as
Additional Public Prosecutor for the State through video
conferencing.

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

The petitioner apprehends his arrest in connection with
Malsalami P.S. Case No. 330 of 2020 registered for the offence
punishable under section 30 (a) of the Bihar Prohibition and
Excise (Amendment) Act, 2018.

The learned counsel for the petitioner has submitted
that the petitioner is not named in the FIR. He is only owner of
Tempo bearing No. BR01 PJ-5804 wherefrom country-made



liquor was recovered. He has no concern with the seized liquor.

Although, the petitioner is not named in the FIR and he is owner of the Tempo wherefrom the alleged liquor was recovered and the Tempo driver Ajit Kumar and co-accused Bhola Kumar were arrested at the spot, even there is nothing in the FIR, which shows that they disclosed the name of the petitioner. Despite all the above things, anticipatory bail is not maintainable, since 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 disposed of, as not maintainable. At the same time, it is observed that if the petitioner surrenders and makes a prayer for regular bail, his prayer for regular bail shall be considered on its own merit on the same day. This fact may be taken notice amongst interalia that the petitioner is only Tempo owner and his name has not been figured in the FIR.

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)

Mahesh/-

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

