

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.61404 of 2021

Arising Out of PS. Case No.-128 Year-2021 Thana- CHHATAUNI District- East Champaran

VIVEK @ VIVEK KUMAR @ VIVEK KUMAR THAKUR S/o Amar Rai @
Aman Rai @ Binod Thakur, Resident of Village- Haropur, Pipra Kothi, P.S.-
Pipra Kothi, District- East Chamapran.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Rakesh Kumar No.1

For the Opposite Party/s : Mr.Rajesh Kumar

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

ORAL ORDER

2 13-07-2022 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
the learned Additional Public Prosecutor for the State.

The petitioner apprehends his arrest in connection with
Chhatauni P.S. Case No. 128/2021 registered for the offence
punishable under section 414 of the Indian Penal Code and
sections 30 (a) and 41 (i) of the Bihar Prohibition and Excise Act.

The learned counsel for the petitioner has submitted that
the petitioner was sitting as pillion rider on the motor cycle of co-
accused, Vyash Kumar, who was arrested and 34 litres of liquor
was recovered from that motor cycle. He has also submitted that
there is nothing against the petitioner except confessional



statement of co-accused Vyash Kumar.

Be that as it may, Section 76 (2) of the Bihar Prohibition and Excise Act, 2016 makes an explicit embargo on entertaining the application under Section 438 of the Code of Criminal Procedure. As such, this anticipatory bail application is not maintainable.

If the petitioner surrenders before the court below and makes a prayer for regular bail, that shall be considered on the same day without being prejudiced by this order. While disposing of the regular bail petition, the learned court below may take notice of the fact that the petitioner was not arrested at the spot, nothing was recovered from his possession and he is a person of clean antecedent.

With these observations, this petition is disposed of.

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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