

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.21749 of 2024

Arising Out of PS. Case No.-28 Year-2022 Thana- BUDDHACOLONY District- Patna

SHAMBHU MALAKAR @ SHAMBHU PRASAD MALAKAR S/O- LATE
SIDHESHWAR BHAGAT @ SIDDHESHWAR BHAGAT R/O- RAJ
MAHAL APARTMENT UTTARI MANDIRI, P.S.- BUDHA COLONY,
DIST.- PATNA.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR
2. Vijay Kumar Son of Late Hari Krishna Resident of Village - Dujrachak, P.S.-
Budha Colony, District - Patna.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Gopal Govind Mishra
For the Opposite Party/s : Mr. Mohammed Arif

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

4 18-07-2024 1. Heard learned counsel for the petitioner and learned
A.P.P. for the State and learned counsel appearing on behalf of
the informant.

2. The petitioner apprehends his arrest in connection
with Budha Colony P.S. Case No.28/2022 dated 18.01.2022,
registered under section 406 and 420 of the Indian Penal Code
and Section 138 of N.I. Act.

3. The learned counsel for the petitioner at the outset
submits that the law is well settled that with respect to an
offence under section 138 of N.I. Act, 1881, an F.I.R. cannot be
instituted rather a complaint is maintainable in terms of Section
142 of N.I. Act and for the said proposition relies on the case of



**Hemant Kumar Das & Another Vs. the State of Bihar,
reported in 2018(4) PLJR 725.**

4. The Court completely concurs with the submission of the learned counsel appearing on behalf of the petitioner but then the learned APP at at this stage submits that the offences for which the instant F.I.R. has been instituted against the petitioner carries a punishment of 7 years and less to which the learned counsel for the petitioner and the informant does not dispute.

5. The learned counsel appearing on behalf of the petitioner further submits that investigation in the case against the petitioner is still continuing, on which, the learned APP submits that the case be disposed of in terms of order 13.02.2024 in Cr. Misc. No.3536/2024 (Naushad Ansari vs. State of Bihar).

6. In view of the submission made by the learned APP, the petitioner would be at liberty to file a representation within a period of three weeks from today before the concerned Superintendent of Police of the district and the Investigating Officer of the case with a web copy of the order dated 13.02.2024 in Cr. Misc. No.3536/2024 (Naushad Ansari vs. State of Bihar) and the Superintendent of Police shall ensure



that Investigating Officer of the case strictly adhere to the
direction contained in the said order.

(Satyavrat Verma, J)

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