GAHC020004852022

THE GAUHATI HIGH COURT
(HIGH COURT OF ASSAM, NAGALAND, MIZORAM AND ARUNACHAL PRADESH)
KOHIMA BENCH

Case No. : Crl. Pet. 22/2022

1:SHRI. JAYANTAJIT BORA
S/O PUTALIKANTA BORA,
AGED ABOUT 41 YEARS,
R/O ANKA GAON VILLAGE,
DISTRICT - GOLAGHAT,ASSAM

VERSUS

1:THE STATE OF NAGALAND AND ANR
NAGALAND, KOHIMA

2:SHRI. YASHPAL SINGH
NO.74645X
NAIB SUBEDAR

7 ASSAM RIFLES
C/O 99 AP

Advocate for the Petitioner : SENTIYANGER

Advocate for the Respondent : GOVT ADV NL

BEFORE

HON'BLE MRS. JUSTICE MARLI VANKUNG

ORDER

Date : 09.02.2023

Heard Mr. Sentiyanger, learned counsel for the petitioner alongwith Mr. K. Angami, learned Public Prosecutor for the respondent No.1 and Mr. Yangerwati, learned counsel for the respondent No.2

2. This is an application under section 482 of the Cr.P.C., 1973 praying for quashing the FIR dated 03.07.2022 and all consequential Criminal proceedings pending against the petitioner/accused in GR No.440/2021 in connection with Medziphema P.S. case No. 14/2022 under section 34 IPC read with section 18 (b) ND & PS Act, 1985 which is pending before the learned Special Court, ND & PS Act, Dimapur.

3. Background of the facts of the matter leading to this Criminal petition is that the petitioner on 03.07.2022 accompanied by the accused Dipankor Barhy was performing his normal duty to deliver goods in his truck bearing registration No.AS-01 DD 6277. The vehicle was intercepted by the personnel of 7th Assam Rifles Bn. at Kukidolong and seized 1638 kgs of poppy seeds, accordingly the FIR dated 03/07/2022 was filed by the respondent No.2 before the Officer-in-Charge Medziphema, P.S

Chumukedima, Nagaland in Medziphema P.S. case No. 14/2022 under section 34 IPC read with section 18 (b) ND & PS Act, 1985 and hence this Crl.Petition U/s 482 Cr.P.C., 1973.

4. The learned counsel for the petitioner submits that the seized poppy seeds is not a contraband substance under section 2(xviii) ND & PS Act, 1985 and in support of his submission has cited the decision of the Apex Court in **Ajaib Singh & Another .Vs. State of Punjab** in **Crl. Appeal No. 361 of 2000**.

5. He also submits that the poppy seeds which were under a zima has now been sold off by the I/O of the case vide order of the District & Session Judge dated 30.11.2022.

6. The learned counsel for the petitioner further submits no offence has been committed by the petitioner since the seized poppy seeds is not a contraband substance and any further proceeding of the case was in violation of the rights of the petitioner under Article 21 of the Constitution of India.

7. Mr. K. Angami, learned Public Prosecutor in all fairness submits that vide the order dated 30.11.2022 passed by the learned District & Session Judge, ND & PS Act, since the seized poppy seeds are perishable in nature and prone to fast natural decay, they have been disposed in the

market and that the current market value of the poppy seeds in Dimapur area amounts to Rs. 50 per kg. The amount of the sale proceeds was to be deposited in the court to compensate the true/actual owner of the poppy seeds. He also further submits that a portion of the seized poppy seeds was also sent to FSL and the report is still awaited.

8. Mr. Yangerwati, learned counsel for the respondent No.2 submits that the respondent No.2 had seized the poppy seeds amounting to Rs.1638 kgs only because the accused could not produced any valid consignment documents at the time of seizure.

9. Having heard the submissions made by both the parties, this Court finds that Section 2(xviii) of the ND & PS Act provides as follows:-

> *"2(xviii) "poppy straw" means all parts (except the seeds) of the opium poppy after harvesting whether in their original form or cut, crushed or powdered and whether or not juice has been extracted therefrom."*

The Apex Court in **Ajaib Singh & Anotheer .Vs. State of Punjab (supra**) observed that 'Modi's Textbook of Medical Jurisprudence & Toxicology says that a poppy seed is used in foods, sprinkled over sweets and also yields a bland oil, which is used for culinary and lighting purposes. It is because of this that a seed has been excluded from the

definition of poppy straw. Poppy seed could be used in food or Indian sweets or made into oil, which largely used for culinary and lighting purposes only after it is dehusked. Thus, the seed would be separated from the husk.'

10. In view of the above, this court finds that proceeding with the case after filing of the FIR would be a futile exercise since it is clearly established that poppy seeds is not a contraband substance and in this case the seized poppy seeds of 1638 Kgs have been disposed by way of sale @ Rs.50/- per Kilograms which is the current value of the seized poppy seeds, thus further continuation of the FIR and the proceedings is not desirable. For the above reasons, the Criminal petition filed under section 482 Cr.P.C. is allowed and the proceeding of the FIR dated 03.07.2022 stand quashed.

11. Accordingly Crl. Petition No.22/2022 stands allowed and disposed.

Sd/-

JUDGE

Comparing Assistant