

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.38831 of 2016

Arising Out of PS.Case No. -25 Year- 2016 Thana -BARACHATTI District- GAYA

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1. Gowardhan Bhokta, Son of Sri Jhano Bhokta
 2. Chhathu Bhokta
 3. Pun Bhokta
 4. Krishna Bhokta
 5. Tileshwar Bhokta @ Tileshar Bhokta

Petitioner Nos. 2 to 5 are sons of Sanichar Bhokta @ Shanichar Bhokta

All r/o village - Nakataiya, P.S. Barachatty, District Gaya

.... Petitioners

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioner : Mr. Ramashish, Advocate.

For the Opposite Party : Mr. Narsingh Tanti, A.P.P.

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CORAM: HONOURABLE MR. JUSTICE SANJAY PRIYA

ORAL ORDER

3 10-01-2017 Heard learned counsel for the petitioners and the State.

The Petitioners seek bail in a case instituted for the offence under Sections 18, 20, 22 of The Narcotic Drugs and Psychotropic Substances Act-1985 (for short 'NDPS Act').

It is alleged in the written report that the informant received confidential information that several persons of Nakataiya village has illegally planted crop of *Posta Dana* for



manufacturing opium by hiding the crops in their wheat and *rahar* crops. On this information, the informant along with the raiding team reached in the village. It is stated that all the male members of the village started running away on seeing the police party. The informant with two independent witnesses proceeded toward western-north of the village and found crops of *Posta Dana* in several lands and several persons were also found working in the land. The informant and raiding team damaged and destroyed crops of *Posta Dana*. The petitioners along with other accused persons were arrested and fruits of crops of *Posta Dana* of 1 Kg. each were seized as sample. The police party also damaged the crops of *Posta Dana* from the land of the other co-accused persons and seizure list was not prepared as fruits were not present in the crops.

It is submitted on behalf of the petitioners that no proper procedure was adopted by the authority while seizing the *Posta Dana* in terms of provisions of Sections 42 and 50 of the NDPS Act. It has further been submitted that *Posta Dana* is not the Narcotic and Psychotropic Substances in terms of definition as mentioned in Section 2(iii) of the NDPS Act. It has further been submitted that there is no mention of any specific person from whose land the aforesaid crops have been recovered.



Learned counsel for the State has submitted that the *Posta Dana* crops are used to prepare the opium.

Be that as it may, from the written report itself it appears that there is no any mention that the alleged *Posta Dana* crops were recovered from the land belonging to the petitioners. It is merely alleged that the police party found *Posta Dana* planted in the land of several persons in the village. It further appears that the police party destroyed the *Posta Dana* crops and alleged to have seized 1 Kg. each from the land of several persons for sample purpose. In this matter, this Court finds that no proper procedure has been adopted by the police party while seizing the *Posta Dana* as prescribed under Sections 42 and 50 of the NDPS Act. It further appears that there is no any specific mention in Section 2(iii) of the NDPS Act that opium is produced by *Posta Dana*. The petitioner is in custody since 28.1.2016.

Considering the facts and circumstances of the case and the period of custody, let the petitioners above named, be released on bail on furnishing bail bond of Rs.10,000/- (Ten thousand) each with two sureties of the like amount each to the satisfaction of learned Sessions Judge (Special Judge under the NDPS Act), Gaya, in connection with Barachatty P.S. Case No.



25 of 2016, subject to the condition that both the bailors will be the relatives of the petitioners.

(Sanjay Priya, J)

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