

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.42384 of 2019

Arising Out of PS. Case No.-163 Year-2019 Thana- SHERGHATI District- Gaya

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1. Sintu Kumar @ Sintu Kumar Verma, son of Kedar Prasad @ Kedar Mahto
Resident of Village - Keshapi, P.S.- Dobhi and District- Gaya
 2. Jalandhar Sao @ Baudha @ Jalendra Sao Son of Raghu Sao Resident of
Village - Gosaidih, P.S.- Hunterganj, District- Chatra (Jharkhand)

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Manish Kumar No2

For the Opposite Party/s : Mr.Nand Kumar

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

2 11-07-2019 Heard learned counsel for the petitioners and learned
counsel appearing on behalf of the State.

Petitioners apprehend their arrest in connection with Sherghati (Dobhi) P.S. Case No.163 of 2019 for the offence punishable under Sections 414 and 34 of the Indian Penal Code and Section 30(d) of the Bihar Prohibition and Excise Act, 2016.

The allegation against these petitioners is that upon information, police intercepted one Mini truck bearing Registration No.BR25-8672 and upon seeing the police party, the petitioners fled away from the place of occurrence, however, on search, police party recovered 90 bags containing 40 k.g. Mahua flower each, total 3600 kg. of Mahua Flower.

Learned counsel for the petitioners submits that from perusal of the First Information Report and seizure list, it is evident



that the recovery of Mahua flowers was only made from the truck in question. He further submits that truck does not belong to the petitioners and the petitioners have been identified by one Chowdika. Learned counsel for the petitioners further submits that even taking into consideration the allegation made in the First Information Report, no offence under the Excise Act is made out against the petitioners inasmuch as Mahua flower does not come under the definition of contraband or traditional liquor intoxicant and intoxicating drug. In support of his submission learned counsel placed Section 2 (16) (40) and (41) of the Bihar Prohibition and Excise Act, 2016.

From perusal of the above mentioned Sections, it transpired that country or traditional liquor means plain or spiced spirit made from Mahua, rice, gur, molasses or grains; or plain or spiced spirit made from silent spirit or extra neutral alcohol or Tari or all fermented liquors, including pachwai, made from mahua, rice, millet or other grains according to native processes.

From perusal of Section 2 (40) it appears that Mahua flower is not mentioned as intoxicants and only product like liquor spirit and any preparation or ingredient either medicinal or otherwise, whether solid, semi solid liquor, semi liquor or gaseous, either made locally or otherwise that may serve as an alcohol or a



substitute for alcohol and is used or consumed for the purposes of getting intoxicated. Intoxicated Drug under Section 2 (41) includes bhang, siddhi or ganja not Mahua flower.

Learned counsel for the petitioners further submits that fragmentation requires including Pachwai made from Mahua, from rice according to native process can also be drug as country or traditionally liquor. Accordingly, learned counsel submits that admittedly no fragmented liquor was seized by the police which was from Mahua, and instead the police has seized only the Mahua flower which is not a contraband item under the Act and that too not from the conscious possession of the petitioners or the vehicles belonging to the petitioners.

Learned counsel further submits that petitioners have falsely been implicated inasmuch as prior to lodging this FIR and other cases, lodged against the petitioners, as mentioned in paragraph 3 of the bail application, the petitioners had complained against the police official of local police station of high handedness before the ACJM, Sherghati, Gaya in Complaint Case No.689/18.

Learned counsel for the State submits that from Bihar Prohibition and Excise Act, 2016, it appears that Mahua flower per se is not coming under the traditional liquor or intoxicants.

After having heard learned counsel for the parties and



taking into consideration the fact that the Mahua flowers have not been seized from the conscious possession or vehicle belonging to the petitioners, accordingly, upon perusal of the First Information Report and the seizure list and taking into consideration the provisions of Excise Act that Mahua flowers is not coming under the intoxicants, country or traditionally liquor, no prima facie case under the Excise Act is made out against these petitioners. Accordingly, I am inclined to exercise my discretion for grant of anticipatory bail to these petitioners.

Accordingly, both the petitioners, named above, are directed to surrender before the learned Court below within a period of four weeks and in the event of surrender by them, they shall be released on anticipatory bail by the Court below upon furnishing bail bond of Rs.10,000/- (Ten thousand) each with two sureties of the like amount each to the satisfaction of learned Special Judge, Excise Act, Gaya, subject to the condition as mentioned under Section 438 (2) of Cr.P.C.

(Anil Kumar Sinha, J)

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