

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.56590 of 2019

Arising Out of PS. Case No.-45 Year-2019 Thana- MAGADH UNIVERSITY District- Gaya

TARUN KUMAR Son of Santan Prasad Resident of Village - Motichak,
Iguna, P.S.- Magadh University, District - Gaya

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Sanjay Kumar Sharma

For the Opposite Party/s :

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

2 09-09-2019 The petitioner apprehends his arrest in connection with Magadh University P.S.Case No. 45 of 2019 registered under Sections 30(d) and 32(2) of the Bihar Prohibition and Excise Act (hereinafter referred to as the 'Act').

Allegation against the petitioner, as per FIR, is that the police found a tempo standing on the road bearing Rg. No. BR-02T-8730 in which driver was not present and the police recovered 11 bags containing 40KgMahua flowers in each bag.

Learned counsel for the petitioner submits that petitioner is the owner of the tempo and the same was given for plying on hire basis to the driver and at the time of occurrence, vehicle was in possession of the driver and no consent or permission was given by the petitioner to the driver to indulge himself in illegal business. He further submits that a Division Bench of this Court in CWJC No. 23163 of 2018 and its analogous cases, has held that proceeding initiated against a person under the Excise Act for



recovery of Mahua flowers exceeding 5Kg is without jurisdiction inasmuch as there is no enabling powers to the prosecution to initiate any action under the Bihar Mahua Flowers Rules and the prosecution can only be launched if Mahua flowers converted either into plain or spiced spirit as clearly defined under Section 2(16) of the Act.

After having heard learned counsel for the parties and taking into consideration the fact that Mahua flowers have been found from tempo which was given on hire by the petitioner to the driver and further the Division Bench of this Court has held that for recovery of Mahua flowers no prosecution can be launched under the Excise Act, as such I am inclined to grant anticipatory bail to the petitioner. Let the petitioner, abovenamed, in the event of arrest or surrender before the court below within a period of four weeks from the date of receipt of a copy of this order, be released on bail upon furnishing bail bond of Rs. 10,000/- with two sureties of the like amount each to the satisfaction of the learned Special Judge, Excise Act, Gaya in connection with Magadh University P.S.Case No. 45 of 2019; subject to condition as laid down under Section 438(2) of Cr.P.C.

(Anil Kumar Sinha, J)

sujit/-

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