IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.28824 of 2020

Arising Out of PS. Case No.-24 Year-2020 Thana- AMBA District- Aurangabad

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RAVI RANJAN KUMAR Son of Ramshnehi Yadav Resident of Village- Shitalgarh, P.S.- Anti, District- Gaya.

... ... Petitioner/s

Versus

The State of Bihar

... ... Opposite Party/s

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Appearance :
For the Petitioner/s : Mr.Santosh Kumar Pandey, Adv.
For the Opposite Party/s : Dr. Mrityunjaya Kumar Gautam, APP

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

ORAL ORDER

2 18-12-2020 The present petition has been taken up for consideration through the mode of Video conferencing in view of the prevailing situation on account of COVID 19 Pandemic, requiring social distancing.

Heard the learned counsel for the petitioner and Dr. Mrityunjaya Kumar Gautam, the learned A.P.P. for the State.

This is an application for grant of anticipatory bail in connection with Amba P.S. Case No. 24 of 2020 registered for the offence punishable under Section 30(c) of the Bihar Excise and Prohibition (Amendment) Act, 2018.

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The allegation is regarding recovery of 1760 kg. of mahua flower, 320 kg. of rice, 400 kg. of chokar, 320 kg. khali and 17 sacks of rice bran from the vehicle seized by the informant and the petitioner is stated to be the owner of the said vehicle.

The learned counsel for the petitioner submits that the petitioner is innocent, he has been falsely implicated in the present case and he is having a clean antecedent. The learned counsel for the petitioner has further submitted that the present FIR has been lodged under a misconception inasmuch as mahua flower is not covered under the definition of "intoxicant" as defined under Section 2(40) of the Bihar Prohibition and Excise Act, 2016 and in fact, the definition of "country and traditional liquor" as found under Section 2(16) of the Bihar Prohibition and Excise Act, 2016, makes it clear that the same covers plain or spiced spirit made from mahua and / or fermented liquors including the pachwai made from the mahua. It is thus submitted that mahua flower is not a

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prohibited item, as such, the provisions of the Bihar Prohibition and Excise Act, 2016 are not attracted. In this connection, the learned counsel for the petitioner has relied upon a Division Bench judgment dated 09.07.2019, rendered by the Hon'ble Division Bench of this Court in CWJC No. 23163 of 2018 and other analogous cases. It is also submitted that the agriculture produce were being taken to the market for being sold there for the purposes of livelihood of the petitioner herein.

Per contra, the learned APP for the State has vehemently opposed the prayer for bail.

Having regard to the facts and circumstances of the case and taking into account the submissions made by the learned counsel for the petitioner and considering the judgment rendered by the learned Division Bench of this Court, as aforesaid, this Court finds that recovery of mahua flower does not lead to the provisions of the Bihar Prohibition and Excise Act, 2016 being attracted, hence, no prima facie case is made out under the provisions of the Bihar Prohibition and Excise Act, 2016, thus, there is no impediment in grant of anticipatory bail

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to the petitioner herein. Accordingly, I deem it fit and proper to enlarge the petitioner above named, in the event of his arrest or surrender before the court below within a period of four weeks from the date of receipt/production of a copy of this order, on anticipatory bail on furnishing bail bond of Rs. 10,000/- (rupees ten thousand) with two sureties of the like amount each to the satisfaction of learned Additional Sessions Judge, VII-cum-Special Judge (Excise), Aurangabad in connection with Amba P.S.Case No. 24 of 2020, subject to the conditions as laid down under Section 438(2) of the Code of Criminal Procedure.

(Mohit Kumar Shah, J)

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