

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20705 of 2019

=====

Niwash Baranwal @ Niwash Kumar Son of Radhey Shayam Baranwal
resident of Village- Khotwa, P.S. Sono (Charkapathar), District- Jamui.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise, Govt. of Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The District Magistrate cum Collector, Jamui.
4. The Superintendent of Police, Jamui.
5. The S.H.O. Sono (Charkapathar) P.S., District- Jamui.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s	:	Mr.Umesh Prasad Mr. Amardeep Mr. Mrityunjay Kumar
For the Respondent/s	:	Mr.Vikash Kumar (Sc11)

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

**(The proceedings of the Court are being conducted through
Video Conferencing and the Advocates joined the proceedings
through Video Conferencing from their residence.)**

Date : 14-09-2020

Heard the parties.

Petitioner has prayed for following relief:-

“This is an application for issuance of an appropriate writ/writs or order/orders for quashing the order dated 22.02.2019 passed by the District Magistrate-cum-Collector Jamui in confiscation proceeding case No.57 of 2017 and also to give possession to the petitioner of the said confiscated house bearing khata no.4. khesara 178, RAKwa 3 decimals in village Khotwa, P.S. Sono (Charkapathar) District, Jamui. The alleged house in



connected to (Charkapathar) P.S. Case No.126 of 2017 for offence u/s 272, 273 I.P.C. and 30(D) of Bihar Prohibition and Excise Act.”

The informant is a police officer who in his written complaint has alleged that on 12.6.2016 he received an information that petitioner is selling Mahua from his house and on receipt of said information , he along with other police personnel raided the house of petitioner then from the corner of a room, three bags of Mahua each containing 50 kg of Mahua was recovered and seized and petitioner was apprehended and FIR was lodged giving rise to (Charkapathar) P.S. Case No.126 of 2017 for offence u/s 272, 273 I.P.C. and 30(D) of Bihar Prohibition and Excise Act and the house was sealed and proceeding was initiated to confiscate the house in which petitioner filed his show cause stating therein that except Mahua no other article was found even to remotely suggest that country made liquor was being prepared from said Mahua.

Division Bench of this Court in C.W.J.C. No. 23163 of 2018 (Umesh Kumar @ Umesh Mahto versus The State of Bihar and Ors. and other analogues matters) has held as follows:-

“Since ‘the Mahua Flowers Rules’ allows any person to remain in possession of Mahua Flowers



to the extent of 5 kg. without any licence and any quantity in excess thereof, is to be done under a licence, the quantity possessed by the respective petitioners in excess of 5 kg., without a licence, may be a statutory violation and thus capable of retention by the State Government but in absence of any penal action so provided under 'the Rules' or 'the Act' for possession of these flowers exceeding the limit, even if the State Government would be within its jurisdiction to retain the same, the confiscation proceedings cannot be allowed to continue.

In result, we hold that the confiscation proceedings, if any, initiated against the petitioners for alleged violation of Section 3 of 'the Mahua Flowers Rules' read alongside the provisions of 'the Act' for possession of Mahua Flowers exceeding 5 kgs., is without sanction of law and consequentially the confiscation proceeding, if any, initiated against the petitioners shall stand quashed and the vehicles seized, if not already released, shall be released in favour of the owner on production of ownership papers."

In view of Division Bench judgment as referred above, the order dated 22.02.2019 passed by the District Magistrate-cum-Collector Jamui in confiscation proceeding case No.57 of 2017 is set aside and it is directed that the premises be unsealed



and possession to be handed over to the petitioner forthwith.

The writ petition is disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	
Transmission Date	NA

