

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.78220 of 2019

Arising Out of PS. Case No.-470 Year-2019 Thana- BARACHATTI District- Gaya

1. LAXMAN CHAUDHARY Son of Sita Ram Chaudhari Resident of Village - Barandih, Post.- Bhalua, P.S.- Barachatti, Distt.- Gaya.
2. Budhan Chaudhary @ Munshi Chaudhary Son of Late Keshav Chaudhary Resident of Village - Barandih, Post.- Bhalua, P.S.- Barachatti, Distt.- Gaya.
3. Mangar Chaudhary Son of Late Keshav Chaudhary Resident of Village - Barandih, Post.- Bhalua, P.S.- Barachatti, Distt.- Gaya.
4. Surendra Chaudhary Son of Ramotar Chaudhary Resident of Village - Barandih, Post.- Bhalua, P.S.- Barachatti, Distt.- Gaya.
5. Guddu Chaudhary Son of Ramotar Chaudhary @ Ramavatar Chaudhary Resident of Village - Barandih, Post.- Bhalua, P.S.- Barachatti, Distt.- Gaya.
6. Uday Chaudhary Son of Dashrath Chaudhary Resident of Village - Barandih, Post.- Bhalua, P.S.- Barachatti, Distt.- Gaya.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Jitendra Narain Sinha, Adv.
For the Opposite Party/s : Mr. Anita Kumari, APP

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

4 26-06-2020 The matter has been taken up through the virtual Court proceeding.

It appears that vide order dated 06.03.2020, passed by a co-ordinate bench of this Court, this application with regard to petitioner no.1, Laxman Chaudhary has been disposed of as having become infructuous.

Heard learned counsel for the petitioners and learned APP for the State.



Petitioner Nos. 2 to 6 have preferred the present application for grant of anticipatory bail in a case registered for the offences punishable under Sections 30(a), 30(d) of the Bihar Prohibition and Excise Act, 2016, as amended by the Amendment Act 8 of 2018, (hereinafter referred to as 'the Act').

The prosecution case as per the self statement of Kumar Saurabh, S.I.-cum-S.H.O., Barachatti Police Station recorded on 07.10.2019 at 2.00 P.M. is to the effect that on the same day at 8.30 P.M., a confidential information was received that in village Barandi, mahua flower is being stored in huge quantity and liquor is being prepared. Consequently, a raid was laid and from the house of petitioner no.1, Laxman Chaudhary, 180 kg. mahua flowers and 5 litres mahua liquor, from the house of petitioner no.2, Budhan Chaudhary, 110 kg mahua flowers and 6 litre mahua liquor, from the house of petitioner no.3, Manager Chaudhary, 130 kg mahua flowers, from the house of petitioner no.4, Surendra Chaudhary, 130 kg mahua flowers and 5 litres mahua liquor, from the house of petitioner no.5, Guddu Chaudhary, 120 kg mahua flower and from the house of petitioner no.6, Uday Chaudhary, 180 kg mahua flowers were recovered.

It is submitted by learned counsel for the petitioner that the



said recovery has been made from the forest area and the petitioners have been framed in the present case. The FIR has been transmitted to the learned Special Judge, Excise Act, after two days of the alleged seizure which clouds the *bona fide* of the prosecution case. A statement has been made in paragraph no.3 of the petition that the petitioners are not having any criminal antecedent.

Learned APP for the State submits that the recovery has been made from the house of the petitioners.

Considering the fact that 110 kg of mahua flowers and 6 litres of mahua liquor and 130 kg of mahua flowers and 5 litres of mahua liquor respectively were recovered from the house of petitioner nos. 2 and 4, the anticipatory bail application is not maintainable in view of Section 76(2) of the Act as well as the ratio laid down by a Full Bench of this court in the case of *Ram Vinay Yadav Vs. the State of Bihar*, reported in 2019 (3) *BLJ* 858.

Accordingly, the prayer for anticipatory bail on behalf of petitioner nos. 2 and 4 is rejected.

So far as petitioner nos. 3, 5 and 6 are concerned, since from their possession, only mahua flowers have been recovered, and the said recovery does not come within the



purview of the Act as the Bihar Excise (Mahua Flowers) Rules, 2006 (hereinafter referred to as 'the Rules') was made in exercise of jurisdiction under Section 97 of the Bihar Excise Act, 1915. The same has been repealed by introducing Bihar Prohibition and Excise Act, 2016. Rule 3 of the Rules mandates that no person other than a person duly authorized by the person holding a licence for the collection of *Mahua flowers*, one of the bases of country liquor, shall collect or possess more than five kilogram of *Mahua flowers* without a licence granted under these Rules.

Considering the fact that the case of petitioner nos.3, 5 and 6 does not come within the purview of the Excise Act coupled with statement made in paragraph no.3 of the petition that they are not having any criminal antecedent, let the petitioner nos. 3, 5 and 6 above named be released on anticipatory bail for the present provisionally for a period of three months, in the even of arrest or surrender before the learned Court below within a period of four weeks from today, on furnishing one surety to the satisfaction of the learned Special Judge, Excise, Gaya, in connection with Barachatti P.S. Case No. 470 of 2019, subject to the conditions as laid down under Section 438(2) of the Cr.P.C.



However, in view of the present pandemic, COVID-19, it will be open for the learned Court below to accept the bail bond on furnishing an undertaking by the surety, on photo copy of his Aadhar Card, to the effect that he is ready to become the bailor of the petitioners which may be transmitted by such surety to the learned Court concerned through e-mode.

The provisional anticipatory bail of the petitioners will be confirmed by the learned Court below within three months on furnishing bail bond of Rs.10000/- (ten thousand) with two sureties, including one surety given at the time of provisional bail, of the like amount each to the satisfaction of the learned Special Judge, Excise, Gaya, in connection with Barachatti P.S. Case No. 470 of 2019

The learned Court below will further be at liberty to extend the period of provisional anticipatory bail further if the court proceeding in physical mode will not resume in next three months.

(Dinesh Kumar Singh, J)

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