

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.32216 of 2021

Arising Out of PS. Case No.-31 Year-2021 Thana- KATORIYA District- Banka

BIKASH SAH SON OF SURESH SAH R/o village- Radhanagar, P.S.-
Katoriya, District- Banka

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ajay Mukherjee, Advocate

For the Opposite Party/s : Mr. Raj Kishore Singh, A.P.P.

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

2 16-12-2021 Heard Mr. Ajay Mukherjee, learned counsel for the

petitioner and Mr. Raj Kishore Singh, learned Additional Public

Prosecutor appearing for the State.

Petitioner seeks regular bail in connection with
Katoriya P.S. Case No. 31 of 2021 (Special Excise Case No. 128
of 2021) registered for the offence punishable under Section
56(d) of Bihar Prohibition and Excise Act, 2016.

The allegation as per the First Information Report is
that the Police intercepted one Tempo in which the petitioner
was sitting near the driver seat and from the said Tempo 200 Kg.
of *Mahua* flower was recovered.

Learned counsel for the petitioner submits that the
petitioner has falsely been implicated in this case merely on the
basis of the fact that he was travelling on the Tempo from which



the *Mahua* flower has been recovered. Learned counsel further submits that the question with regard to the fact that the recovery of *Mahua* flower exceeding 5 Kg. can be a subject matter of proceeding under the Excise Act was considered by a Division Bench of this Court in C.W.J.C. No. 23163 of 2018 and Division Bench of this Court has held as follows:-

“.....we find the proceedings initiated against the petitioners for alleged recovery of Mahua flowers exceeding 5 Kg. which lies at the foundation for such penal action under ‘the Act’ and the ‘Mahua Flowers Rules’, absolutely without jurisdiction because we neither find such enabling powers in the respondents to initiate any action under ‘the Bihar Mahua Flowers Rules’ nor ‘the Act’ enables the respondents to initiate action on mere possession of Mahua Flowers, until, it is converted either into plain or spiced spirit as clearly defined under Section 2(16) of ‘the Act’.

Regards being had to the submission made by the parties and taking into consideration the materials on record and in view of the judgment passed by the Division Bench, I am inclined to grant regular bail to the petitioner.



Accordingly, let the petitioner, above named, be released on regular bail on furnishing bail bonds of Rs.10,000/- (Ten thousand) with two sureties of the like amount each to the satisfaction of learned Additional Sessions Judge-II, Banka, in connection with Katoriya P.S. Case No. 31 of 2021 (Special Excise Case No. 128 of 2021).

It is made clear that at the time of furnishing bail bonds all the parties shall follow the guidelines regarding social distancing.

(Anil Kumar Sinha, J)

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