

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.33961 of 2020**

Arising Out of PS. Case No.-28 Year-2020 Thana- SIMRI District- Darbhanga

1. Birju Kumar Mahto @ Birju Mahto, aged about 22 years (Male).
2. Baiju Mahto aged about 34 years (Male),
Both sons of Ramjatan Mahto @ Santani Mahto, resident of village- Simri,
P.S.- Simri, District- Darbhanga.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Baidya Nath Prasad, Advocate
For the State	:	Ms. Nirmala Kumari, APP

**CORAM: HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH
ORAL JUDGMENT**

Date : 29-06-2021

The matter has been heard *via* video conferencing.

2. Heard Mr. Baidya Nath Prasad, learned counsel for the petitioners and Ms. Nirmala Kumari, learned Additional Public Prosecutor (hereinafter referred to as the 'APP') for the State.

3. The petitioners apprehend arrest in connection with Simri PS Case No. 28 of 2020 dated 15.02.2020, instituted under Sections 272, 273/34 of the Indian Penal Code and 30(a) of the Bihar Prohibition and Excise Act, 2016.

4. The allegation against the petitioners is that they were also associated in the business of manufacturing and selling fake toddy and two co-accused persons were caught and



there was recovery from the house of Manoj Mahto, Sonu Mahto and the petitioners are brothers of Manoj Mahto.

5. Learned counsel for the petitioners submitted that they are living separately and also have separate mess and business from their brother Manoj Mahto for the last five years, which has been also certified by the local Mukhiya. It was submitted that only because they are related to Manoj Mahto, they have also been made accused. Learned counsel submitted that in the FIR itself it has been stated that two persons were seen at the spot and tried to run away and both were caught which shows that the petitioners were not present at the spot also as both the persons who were said to have been present at the spot and had tried to escape were caught by the police. It was submitted that the petitioners have no criminal antecedent.

6. Earlier, the Court had asked learned APP to obtain up-to-date legible photo copy of the entire case diary as also the specific report on the point as to whether the petitioners have separate residence and mess from Manoj Mahto, the brother of the petitioners and one of the persons who was apprehended on the spot. Learned APP submitted that she has got the copy of the case diary as also the report in which it has been stated that after partition the brothers are living separately and have also



separate mess. However, she submitted that the full brother of the petitioners and their nephew, who were caught, had stated that the petitioners were also involved in the manufacturing of toddy. On a specific query of the Court as to whether any other material or witness has stated with regard to the petitioners being involved, learned APP submitted that no other witness has stated with regard to the role of the petitioners in manufacturing and selling of toddy.

7. Having considered the facts and circumstances of the case and submissions of learned counsel for the parties, in the event of arrest or surrender before the Court below within six weeks from today, the petitioners be released on bail upon furnishing bail bonds of Rs. 25,000/- (twenty five thousand) each with two sureties of the like amount each to the satisfaction of the learned 2nd Additional Sessions Judge-cum-Special Judge, Excise Act, Darbhanga, in Simri PS Case No. 28 of 2020, subject to the conditions laid down in Section 438(2) of the Code of Criminal Procedure, 1973 and further (i) that one of the bailors shall be a close relative of the petitioners, (ii) that the petitioners and the bailors shall execute bond with regard to good behaviour of the petitioners, and (iii) that the petitioners shall also give an undertaking to the Court that they shall not



indulge in any illegal/criminal activity, act in violation of any law/statutory provisions, tamper with the evidence or influence the witnesses. Any violation of the terms and conditions of the bonds or the undertaking shall lead to cancellation of their bail bonds. The petitioners shall cooperate in the case and be present before the Court on each and every date. Failure to cooperate or being absent on two consecutive dates, without sufficient cause, shall also lead to cancellation of their bail bonds.

8. It shall also be open for the prosecution to bring any violation of the foregoing conditions of bail by the petitioners, to the notice of the Court concerned, which shall take immediate action on the same after giving opportunity of hearing to the petitioners.

9. The application stands disposed off in the aforementioned terms.

(Ahsanuddin Amanullah, J)

J. Alam/-

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