

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No. 350 of 2017

Arising out of P.S. Case No. - null Year - null Thana - null District - PATNA

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Md. Rizwan, S/o Late Md. Sayeed, R/o Ghat Road, Khagekalan, P.S. - Khagekalan,
District - Patna.

.... Petitioner

Versus

1. The State of Bihar through Principal Secretary, Home Department, Govt. of Bihar, Patna
2. The Director General of Police, Bihar, Patna
3. The Inspector General, Patna Zone, Patna
4. The Deputy Inspector General, Central Range, Patna.
5. The District Magistrate, Patna.
6. The Senior Superintendent of Police, Patna.
7. The Superintendent of Police East, Patna.
8. The Sub-Divisional Police Officer, Patna City, District - Patna.
9. The Station House Officer, Khajekalan, District- Patna.
10. Executive Magistrate, Patna City, Patna.
11. The Union of India through, Chief Controller of Explosives, Govt. of India, Ministry of Commerce and Industry, Petroleum and Explosives Safety Organization, Nagapur.
12. Controller of Explosive, Mahavir Complex, Adarsh Colony, P.O.- New Jaganpura, Patna.

.... Respondents

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Appearance :

For the Petitioner	: Mr. Ramakant Sharma, Sr. Advocate Mr. S.M. Shabbir Alam, Advocate
For the State	: Mr. Kumar Vikram, A.C. to G.A. IV
For the U.O.I.	: Mr. A. K. Pandey, Mr. R. K. Sharma, C.G.C.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT
Date: 28-06-2017

Heard learned counsels for the parties.

2. The present writ application has been filed for issuance of appropriate direction to the respondent-authorities to unseal the sealed premise in connection with Khajekalan Police Station Case No. 253 of 2016. There is no dispute that the premise belongs to the petitioner which was sealed for alleged violation of the



provisions of the Explosive Acts and Rules made thereunder.

3. Submission of the petitioner is that the FIR of the aforesaid case would reveal that the premise was sealed for the reason that No no-Objection Certificate was obtained by the petitioner before obtaining license for the storage and sale of crackers. Though the petitioner was found selling and storing the crackers. Secondly, on the ground that the premise situated in a densely populated area on which family of the petitioner was residing at the upper floor. Thirdly, on the ground that the quantity of the crackers found in the premise was apparently much more than permitted by the license.

4. Submission of the petitioner is that the license was issued in favour of the petitioner in the year 1991 and is valid till 2019 after renewal from time to time as would be evident from Annexure-1. At the time of obtaining the license, there was no need for obtaining prior NOC. Moreover, it was duty of the authority granting the license to ask for NOC if that was needed. Second contention is that no one was residing in the upper floor of the sealed house and this is not a violation of the terms and conditions or the provisions of the Act that the same is situated in a densely populated area. There is no seizure list prepared, hence, it cannot be said that the recovered crackers were more than the permissible limit. The aforesaid assertion is in paragraph no. 7 and 8 of the writ application which has not been



denied by the respondents in the counter affidavit vide paragraph no. 6 of the counter affidavit. Moreover, the provisions of the Explosive Act, 1884 or the Rules made thereunder in the year 2008 does not provide for sealing of such premise from where explosives were recovered or was stored in unauthorized way. Therefore, the sealing of the premise violates the fundamental right of the petitioner.

5. It appears that Nasrin Begum, the Bhabhi of this petitioner had approached this Court in Cr.W.J.C. No. 1100 of 2016 for unsealing of the residential premise wherein she was residing, for unsealing of the premise in connection with the same very case and this Court had ordered the respondents to remove the seized articles and to unseal the said premise within the time indicated.

6. Learned counsel for the respondents opposed the prayer, however, could not show any provisions of law under which such premise can be sealed by any of the authorities.

7. The aforesaid submission of the petitioner is acceptable that the basis of institution of the criminal prosecution is not substantiated by material on the record. Moreover, there is no provision in the Act or Rules made thereunder to seal the premise from where explosives were recovered. Hence, the unauthorized act of the respondents violates the legal right of the petitioner.

8. In the result, it is directed that the respondents shall,



immediately, unseal the sealed premise and hand over possession of the same to the petitioner or his authorized agent within ten days from the date of receipt of a copy of this order which is being passed in presence of the learned counsel for the respondents.

9. The writ application, accordingly, stands allowed.

However, without any cost.

(Birendra Kumar, J)

Kundan/-

AFR/NAFR	N.A.
CAV DATE	N.A.
Uploading Date	01.07.2017
Transmission Date	01.07.2017

