

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.2823 of 2018

Arising Out of PS. Case No.-187 Year-2017 Thana- HASANPUR District- Samastipur

Sri Umesh Kumar Rai son of Braj Kishore Roy, Resident of Village- Rampur,
P.S. Hasanpur, District Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise, Department, Government of Bihar, Patna.
2. The Principal Secretary, Excise Department, Government of Bihar, Patna.
3. The District Magistrate, Samastipur.
4. The Superintendent of Police, Samastipur.
5. The Thana Incharge, Hasanpur, Police Station, Hasanpur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Bhubneshwar Prasad
For the Respondent/s : Mr.Vivek Prasad (Gp-7)

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL ORDER

2 20-12-2018 Heard learned counsel for the petitioner and learned
counsel for the State.

This application has been filed seeking provisional release of the hotel/land/house bearing New Khata No. 287, New Khesra No. 350, Mauja Rampur, Thana No. 294 (Hasanpur) Bazar, Area 10' x 10' seized in connection with Hasanpur P.S. Case No. 187 of 2017 registered under Sections 47 and 30(a) of the Bihar Prohibition & Excise Act, 2016.

Accusation is that 2.160 liters wine is recovered from the premises of the petitioner.

Learned Counsel for the petitioner submits that only he is an owner of Khata No. 247, Khesra No. 330. He is



not named in the said case. The said room was given to one Gunjan Kumar @ Gunja @ Gunjesh Kumar @ Gunjo on rent for running a shop and said Gunjan Kumar had promised that no objectionable work will be done by him in the said shop. Annexure-2 is the kirayanama dated 8.11.2012 which was extended up to 13.05.2018.

Learned counsel for the petitioner submits that no confiscation proceeding has been initiated.. Learned counsel further submits that nothing incriminating article has been recovered from the conscious possession of the petitioner and he is not at all concerned with the said seized wine. Learned counsel for the petitioner also submits that at this stage when the confiscation proceeding has not been initiated, the room in question may be released and further possession be handed over to him on such terms and conditions which this Court may find just and proper to protect the interest of the State. Learned counsel for the petitioner has relied upon the decisions of the Supreme Court in the case of *Sunderbhai Ambalal Desai vs. State of Gujrat* reported in (2002) 10 SCC 283 and *General Insurance Council and others vs. State of Andhra Pradesh and others* reported in (2010) 6 SCC 768 and the decision of the Hon'ble High Court, Patna passed in C.W.J.C. No.12297 2018



(D.B.) dated 10.12.2018.

In the given facts and circumstances where no confiscation proceeding has been initiated, let the room in question be de-sealed provisionally in favour of the petitioner on producing the document of ownership/title in his name before the concerned court below with two sureties. The petitioner while submitting the sureties shall also furnish the following affidavits/undertakings:-

(i) That the petitioner shall not indulge in creating any third party right or interest in respect of the room during the pendency of the confiscation proceeding and shall not alienate the room during this period.

(ii) The petitioner shall furnish an undertaking to hand over the possession and paper of the room before the confiscating authority as and when required.

(iii) Prior to release of the room, a Panchnama would be prepared by the court below wherein the photograph of the room shall be taken and will be certified by the petitioner and the same shall be kept on record so that in future if so required it may be used as a secondary evidence. The petitioner shall undertake not to challenge the said Panchanama in course of trial.



Subject to the above conditions, following the views expressed by Hon'ble Apex Court as well as Hon'ble Division Bench of this Court and in tune with that, I dispose of this application.

The de-sealing of the room shall be allowed within a period of 7 days from the date of submission of the surety bond and the undertakings as stated above. This would, however, be subject to initiation and finalization of the confiscation proceeding if any.

(Sudhir Singh, J)

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