

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2026 of 2019

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Mahendra Prasad Yadav, S/O Late Rameshwar Prasad Yadav, R/O village
Adarsh Nagar, Ward no.8 P.S and District Madhepura.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Home Department, Bihar Patna.
2. The Principal Secretary Home Department, Bihar Patna.
3. The District Magistrate Cum Collector, Madhepura.
4. The Superintendent of Excise, Madhepura.
5. The Inspector, Excise Madhepura, District Madhepura.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sharda Nand Mishra, Adv.
For the Respondent/s : Mr. Kumar Manish, SC- 5

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 04-02-2019

Heard learned counsel for the petitioner and learned
counsel appearing on behalf of the State.

This application has been filed for a mandamus
directing the State-respondents to release/unseal the
house/shop of the petitioner sealed in connection with
Confiscation Case No.24 of 2018 arising from Excise Case
No.27 of 2018 for the offences punishable under section
30(A) of the Bihar Prohibition and Excise Act, 2016. The
seizure list shows recovery of 168 litres of country made
liquor.

Apart from a prayer for release/unseal of house/shop



in question, the petitioner has also prayed for quashing of the order dated 20.11.2018 and 17.12.2018 passed by the District Magistrate cum Collector, Madhepura (Respondent no.3) in Excise Confiscation Case No.24 of 2018 (arising out of Excise Case No.27 of 2018), by which a direction to confiscate the house/shop in question has been passed.

Learned counsel for the petitioner submits that for the present, he would not be pressing the order dated 20.11.2018 and 17.12.2018 passed by the District Magistrate cum Collector, Madhepura (Respondent No.3) in connection with Excise Confiscation Case No.24 of 2018, he, however, submits that liberty may be granted to the petitioner to challenge the confiscation order in an appropriate jurisdiction by filing an appeal before the Commissioner within a period of 30 days from today.

In the circumstances discussed, where final order has been passed in the proceedings, we allow the petitioner to challenge the order of confiscation before the Appellate Authority within a period of 30 days from today. In case, such an appeal is preferred within the aforesaid period, with an application for condonation of delay, the Appellate Authority shall consider the same keeping in mind that the petitioner was



prosecuting his remedy before this Court and the appeal shall be heard on its own merit and disposed of expeditiously.

Learned counsel for the petitioner, at this stage, submits that because the appellate authority has no power to pass an interim order of unseal of the house/shop, he would press this application for provisionally unsealing the house/shop in question pending disposal of appeal.

Learned counsel for the State is present and submits that in the given facts and circumstances of this case if at all the Court is willing to consider provisional unsealing of the house/shop then the interest of the State is required to be protected.

Considering the facts and circumstances of the case where it is said to be the residential house under seizure for about one year and the petitioner is ready to furnish adequate security to safeguard the interest of the State, following the consistent views of the Division Bench of this Court, we direct that pending filing and disposal of the appeal, the House of the petitioner in question be provisionally unsealed and possession be handed over to the petitioner on the petitioner's depositing the original title deed of the property in question as security with one surety to the extent of value of the property



as per the circle rate with the District Magistrate cum Collector, Madhepura. On submission of the original title deed of the property in question with the surety, the House/shop shall be de-sealed and possession be handed over within one week thereof. The title deed deposited by the petitioner shall be kept in safe custody of the Confiscating Authority.

The owner of the property shall undertake that he will not deal with the property in question and shall not create any third party interest whatsoever in the meanwhile.

In case, the petitioner fails to take recourse to the appellate remedy within the period granted hereinabove, this order shall stand recalled and the respondent shall be at liberty to proceed in accordance with law.

The application is allowed with the observation and directions set out hereinabove.

(Jyoti Saran, J)

(Arvind Srivastava, J)

skpathak/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.02.2019
Transmission Date	NA

