

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2417 of 2019

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Pramod Singh, aged about 38 years, S/o Janeshwar Singh Resident of Village-
Ukarmi, P.S. Obra, Distt. Aurangabad. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of
Registration, Excise and Prohibition, Government of Bihar.
 2. The Excise Commissioner, Bihar, Patna
 3. The Collector- Cum-The District Magistrate, Aurangabad.
 4. The Superintendent of Police, Saran, Aurangabad.
 5. The Circle Officer, Obra, Aurangabad. Respondents
- =====

Appearance :

For the Petitioner/s : Mr. Bhaskar Shankar
For the Respondent/s : Mr. Anil Kumar Sinha (Ga1)

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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 : 08-02-2019

Heard learned counsel for the petitioner and learned
counsel for the State.

This application has been filed seeking provisional
release/ unseal of the house in question in connection with Excise
Case No. 317/2017 arising out of Obra P.S. Case No. 70/2017
under the provisions of the Bihar Prohibition and Excise Act,
2016.

Apart from a prayer for release of the house the
petitioner has also prayed for quashing of the order dated
29.9.2018 passed by the Collector-cum-District Magistrate,
Aurangabad in Excise Case No. 317/2017 by which a direction to
confiscate the house has been passed by the District Magistrate
being the Confiscating Authority.



Learned Counsel for the petitioner submits that for the present he would not be pressing the relief for quashing of the order dated 29.9.2018 passed by the Collector-cum-District Magistrate, Aurangabad in Excise Case No. 317/2017, 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 circumstance noted where final orders have been passed in the confiscation proceedings, we grant liberty to 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 together 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 release, he would press this application for a provisional release of the house in question.



Learned Counsel for the petitioner submits that 50 liters of Foreign liquor and 130 liters of Country made liquor has been seized. He submits that the State is not going to gain by auctioning the house. Learned Counsel further submits that the petitioner is willing to provide such surety and undertakings which may be required to protect the interest of the petitioner as well the State, during the pendency of the 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 release of the house then interest of the State is required to be protected.

Bearing note of the order of release passed in similar circumstance in C.W.J.C. No. 8513 of 2018 whereby a provisional release has been allowed during the pendency of appeal subject to conditions imposed to protect the interest of the State, we take a similar view in the present case as well.

Let the house in question be accordingly released provisionally in favour of 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 the value of the property as per the circle rate with the District Magistrate, Aurangabad. On submission of the original title deed of the property in question



with the surety, the house 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 by the Confiscating Authority.

The owner of the property shall undertake that during the pendency of the confiscation proceeding, he will not deal with the property in question and shall not create any third party interest whatsoever.

If the petitioner fails to present an appeal within 30 days as given above, the order of provisional release shall stand withdrawn and the Confiscating Authority shall be at liberty to proceed in accordance with law.

The release shall be allowed within a period of 14 days from the date of submission of the sureties along with the undertakings as stated above. This release would, however, be subject to the order passed in appeal.

The writ petition is allowed with the directions/observations above.

(Jyoti Saran, J)

Surendra/-

(Arvind Srivastava, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	25.02.2019
Transmission Date	NA

