

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2702 of 2019

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Indradeo Singh S/o Late Raj Bihari Singh R/o Village- Karma Kala, P.S.
Daudnagar, District- Aurangabad (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Excise Department,
Government of Bihar, Old Secretariat, Patna.
2. The District Magistrate, Aurangabad (Bihar).
3. The Superintendent of Police Aurangabad (Bihar).
4. The District Supply Officer Aurangabad (Bihar).
5. The S.H.O. Daudnagar, District- Aurangabad (Bihar).

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Lal Bahadur Singh
For the Respondent/s : Mr.Anil Kr. 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 : 27-03-2019

Heard learned counsels for the parties.

This application has been filed for a mandamus directing the State-respondents to release/unseal the house of the petitioner sealed in connection with Daudnagar P.S. Case No. 82 of 2017 registered under Section 30(a) of the Bihar Prohibition and Excise Act, 2016. The seizure list shows recovery of 600 ml. IMFL.

While praying for provisional un-sealing of the house situated at village Karma Kala, P.S. - Daudnagar in the district



of Aurangabad, the petitioner has also prayed for quashing of the order dated 31.08.2018 passed by the District Magistrate, Aurangabad, Bihar (Respondent No.2) in Excise Case No. 379 of 2017, whereby the house of the petitioner has been confiscated for alleged violations of the provisions of the Bihar Prohibition and Excise Act, 2016.

It is because the recitals of the F.I.R. reflected a seizure of arms as well as explosive that this Court directed the Superintendent of Police, Aurangabad to verify as to why the case was only instituted under the Bihar Prohibition and Excise Act leaving aside the provisions of the Arms Act and Explosive Substances Act even though the same was recovered from the place of occurrence.

A counter affidavit is filed by the Deputy Superintendent of Police on behalf of the respondent no. 3 to inform that along side a police case bearing Daudnagar P.S. Case No. 81 of 2017 has been registered for alleged violations of the provisions of the Arms Act as well as Explosive Substances Act.

Learned counsel for the petitioner submits that for the present, he would not be pressing the order dated 31.08.2018 passed by the District Magistrate, Aurangabad (Respondent



No.2) in connection with Excise Case No. 379 of 2017, however, 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, we grant liberty to the petitioner to challenge the order of confiscation before the appellate authority within a period of 30 days from today and 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 the appellate authority has no power to pass an interim order for unsealing the house and thus he would press this application for provisional unsealing of the house in question pending disposal of appeal and subject to furnishing reasonable surety.

Learned counsel for the State while opposing the prayer 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 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 a residential house under seizure for more than two years 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, 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 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 above, this order shall stand recalled and the respondent shall be at liberty to proceed in accordance with law.

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

(Jyoti Saran, J)

(Arvind Srivastava, J)

Nasimul/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	09-04-2019
Transmission Date	N/A

