

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3174 of 2019

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Mohammad Lal aged 36 years, Gender- Male, Son of ate Idris Resident of Laheri, Masjid Chauk, Ward No. 10, Madhepura, Police Station-Madhepura, District-Madhepura

... .. Petitioner/s

Versus

1. The State of Bihar through Excise Commissioner Bihar, Patna
2. The Collector-Cum-District Magistrate, Madhepura Bihar
3. The Excise Superintendent, Madhepura Bihar

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Uday Chand Prasad
For the Respondent/s : Mr.Vikash Kumar (SC 11)

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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 : 22-02-2019

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 of the petitioner sealed in connection with Excise Case No. 24 of 2018 registered under sections 30 (a) of the Bihar Prohibition and Excise Act.

Apart from a prayer for unseal of the house in question, the petitioner has also prayed for quashing of the order dated 20.11.2018 passed by the Collector-cum-District Magistrate, Madhepura in connection with Confiscation



(Excise Act) Case No. 20 of 2018, by which a direction to confiscate the house 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 passed by the Collector-cum-District Magistrate, Madhepura (Respondent No.2) in connection with Confiscation (Excise Act) Case No. 20 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 view of the circumstances discussed above, 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 accompanied 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 for unsealing the house, he would press this application for a provisional unseal of the house in question.

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.

Considering the facts and circumstances of the case where it is said to be a residential house under seizure 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 the House of the petitioner be provisionally de-sealed 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 Collector-cum-District Magistrate, Madhepura. 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 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.

It goes without saying that should the petitioner fail to make avail of the liberty granted by us and to file an appeal within the period of 30 days as stipulated above, the interim relief granted by us shall stand recalled and the confiscating authority shall be at liberty to proceed in accordance with law.

The application is allowed to the extent as stated hereinabove.

(Jyoti Saran, J)

(Arvind Srivastava, J)

mcv/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26-02-2019
Transmission Date	NA

