

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5178 of 2019

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Laxmi Prasad Gupta aged about 70 years (male) son of Narayan Prasad Sah
R/o Village- Sonar, P.S. Riga, District- Sitamarhi.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Registration, Excise and Prohibition Department, Govt. of Bihar, Patna.
2. The Collector Sitamarhi.
3. The Deputy Collector, Incharge, District Law Section Sitamarhi.
4. The Superintendent of Police Sitamarhi.
5. The S.H.O., Riga Police Station District Sitamarhi.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ashok Kumar Jha
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 : 08-04-2019

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 unseal the House of the petitioner sealed in connection with Riga P.S. Case No. 73 of 2016 registered under sections 272, 273/34 of the Indian Penal Code and for the offences punishable under Section 47(A) of the Bihar Excise Amendment Act for recovery of 6.840 liters of I.M.F.L.

Apart from a prayer for unseal of the house in



question, the petitioner has also prayed for quashing of the order dated 25.09.2018 passed by the Collector, Sitamarhi (Respondent No.2) in connection with Confiscation Case No. 94 of 2016, 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 25.09.2018 passed by the District Magistrate, Sitamarhi (Respondent No.2) in connection with Confiscation Case No. 94 of 2016, 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 noted, liberty is granted 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 of unseal of the house, he would press this application for unseal of the house in question even if provisionally.

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 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 finalization of the appellate proceeding, 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,



Sitamarhi. 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	14.04.2019
Transmission Date	NA

