

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4021 of 2022

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Shyam Sundari Devi Wife of Late Bal Krishna Prasad Resident of Village -
Dehrigarh, P.S. - Harnaut, District- Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Department of Excise and prohibition, Government of Bihar, Patna.
2. The Principal Secretary, Department of Excise and prohibition, Government of Bihar, Patna.
3. The District Magistrate - cum- collector, Nalanda.
4. The Superintendent of Police, Nalanda.
5. The District Supply Officer, Nalanda.
6. The Excise Superintendent, Department of Excise, Nalanda.
7. The Station House Officer, Harnaut, P.S. - Nalanda.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Manoj Kumar Singh, Adv
For the Respondent/s : Mr.Lalit Kishore (AG)

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(The proceedings of the Court are being conducted by Hon'ble the Chief Justice /Hon'ble Judges through Video Conferencing from their residential offices/residences. Also, the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences /offices.)

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 01-04-2022

Heard learned counsel for the parties.

Petitioner has prayed for following relief:-

“That, by way of this writ petition the petitioner craves indulgence of this Hon'ble Court, for the issuance of a writ in the nature of mandamus or an appropriate writ, order or orders, direction or directions commanding the respondent authorities to open the seal of the dwelling house of the petitioner, which has been sealed by the Harnaut police in connection with Harnaut P.S. Case No.

373 of 2021 instituted u/s 30(a) of Bihar Prohibition and Excise Act, 2018 from which the allegedly recovery of illegal liquor from the one room of the joint dwelling house has been made and the petitioner further prays for the stay of confiscation proceeding, if any, as well as other consequential reliefs.”

Petitioner has approached this Court without exhausting the statutory remedy of appeal against the impugned order, as such, petitioner is granted liberty to avail the remedy of appeal against the confiscation order passed by the Confiscating Authority- cum- District Magistrate, before the Appellate Authority and if any such appeal is filed within 4 weeks then appellate authority shall condone the delay in filing the appeal and shall decide the appeal on its own merit preferably within 8 weeks from the date of its filing.

During pendency of appeal, the confiscated vehicle/property shall not be auction sold, if not already auction sold.

OR

It is submitted on behalf of counsel for the State that during pendency of writ petition, there has been amendment in the Bihar Prohibition and Excise Rules, 2021 and a new Rule 12(B) has been inserted which reads as under:-

"12B. Release of Premises on Payment of Penalty: - (1) If any premises or part thereof has been seized or sealed by any police or excise officer under the Act, then

in terms of section-57B (2) of the Act, the Collector or an officer authorized by him, upon receipt of an application in Form V from the owner of the said premises, may release or unseal the said premises or part thereof upon payment of such penalty as may be ordered by the Collector or the officer authorized by him. Provided, where it is not possible to ascertain the owner of the premises or the owner is not coming forward, the Collector or the officer authorized by him shall, after waiting for 15 days from the date of seizure/sealing, proceed to confiscate the premises as per the provisions of the Act.

(2) The Collector or the officer authorized by him shall have due regard to the economic status of the individual, nature of his involvement in the crime, location of the premises and the quantum of intoxicant recovered while deciding the quantum of fine to be paid by the individual. However, the fine shall not be less than Rs. one Lakh in any case. In any case, the Collector shall not wait beyond 15 days from the date of seizure/sealing and if during this period, the accused/owner does not pay up the penalty he shall proceed with the confiscation/auction.

(3) Notwithstanding above, if on a report by police officer or excise officer, the Collector or the officer authorized by him is satisfied that releasing the premises shall not be in the public interest, the Collector or the officer authorized by him shall proceed ahead with the confiscation of the said premises or part thereof and its subsequent auction/disposal.

(4) Such penalty shall be, regardless of the outcome of the trial if any, before the Special Court, non-refundable.

(5) The owner of the Premises shall, after the release of the premises, allow the inspection of the premises as and when desired by the authorities.

[Explanation: In all pending/ongoing cases of confiscation/ auction of premises, the Collector or the officer authorized by him may give an opportunity to the existing owner to pay the aforesaid penalty and get the premises released. Upon satisfaction of ownership and upon payment of such penalty, the ongoing confiscation/auction proceeding may be dropped and the premises released.]"

In view of amendment in the Excise Act, and same being applicable in pending case, it shall be open for the petitioner to get his/her house unsealed after making payment of penalty in terms of Rule 12(B) inserted by amending Bihar

Prohibition and Excise Rules, 2021.

With aforesaid observation and direction, the writ
petition stands disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

ranjan/-

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