

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4425 of 2022

=====

Moti Ray Son of Late Dharikshan Ray, Resident of Village- Bhataulia, Police Station- Bairgania, District- Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar through the Commissioner, Excise, Government of Bihar, Patna.
2. The Collector-cum- District Magistrate, Sitamarhi.
3. The Sub Divisional Magistrate, Sadar, Sitamarhi.
4. The Superintendent of Police, Sitamarhi.
5. The Station House Officer, Bairgania Police Station, District- Sitamarhi.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.Anil Kumar, Advocate
For the Respondent/s : Mr.Vivek Prasad (GP 7)

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

(The proceedings of the Court are being conducted through Video Conferencing and the Advocates joined the proceedings through Video Conferencing from their residence.)

Date : 06-05-2022

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s):-

- (i)** For issuance of a writ in the nature of Mandamus directing and commanding the respondents to unseal the room of Hotel Raj, situated at Khata No. 2675, Plot No. 1191, area 0.04¾ Decimal in Bairgania (Bel Dugarwana), Jamabandi No. 6179, Police Station – Bairgania, District – Sitamarhi, which has been sealed in Bairgania P.S. Case No. 45 of 2021 under Section 30(a) of the Bihar Prohibition and Excise Act, 2016 allegedly altogether 1 Liter 200 M.L. Nepali Country made

Sauhi liquor and 180 M.L. foreign liquor altogether 1 Liter 380 M.L. liquor has been recovered from room beside north side of Generator Room of the Raj Hotel,

- (ii)** For issuance of a writ in the nature of certiorari to quash the order passed in Confiscation Case No. 826 of 2021 and communicated through memo no. 4898 dated 30.12.2021 to the Station House Officer of Bairgania Police Station and Superintendent of Police, Sitamarhi for necessary action.
- (iii)** For issuance of a writ in the nature of mandamus directing and commanding the respondent to stay the Confiscation of the northern side room beside Generator Room of the Raj Hotel as per order passed in Confiscation Case No. 826 of 2021 and communicated through memo no. 4898 dated 30.12.2021 to the Station House Officer of Bairgania Police Station and Superintendent of Police, Sitamarhi for necessary action.
- (iv)** To grant any other relief / reliefs, order / orders for which the petitioner is entitled under law as well as on fact.

Allegation is of recovery of 1.2 litre of illicit liquor from room situated at northern side of Generator room of the petitioner. It is further submitted that confiscation case no.826 of 2021 has been initiated for confiscation of the house of petitioner.

It is submitted on behalf of counsel for the petitioner that a meagre quantity of 1.2 liter of illicit liquor has been recovered from a room of the house of petitioner, as such, it cannot be presumed that illicit liquor was stored for sale/purchase or trade purpose.

In said view of the matter, the District Collector/Confiscating authority, Sitamarhi is directed to Provisionally unseal the sealed house of the petitioner during pendency of confiscation proceeding upon furnishing adequate sureties and undertaking to the satisfaction of District Collector / Confiscating Authority, Sitamarhi.

Petitioner shall also file an under taking that during pendency of confiscating proceeding, no third party right or interest will be created on the property liable for confiscation.

The release shall be allowed within a period of 14 days from the date of submission of the sureties and the undertakings as stated above, which would however be subject to finalization

of the confiscation proceeding.

Or

It is submitted by learned 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) and 57(B) have 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.]"

57B-Things or premises liable to be released upon penalty-

(1) Any animal, vehicle, vessel or other conveyance used for committing any offence punishable under this Act that has been seized by any police Officer or Excise Officer may be released by the Collector upon payment of such penalty as may be notified by the State Government.

(2) Any premises or part thereof used for committing any offence punishable under this Act that has been seized by any police Officer or Excise Officer may be released by the Collector upon payment of such penalty as may be notified by the State Government.

(3) If the person concerned does not pay the penalty, then the Collector shall proceed to confiscate the said animal, vehicle, vessel or other conveyance and premises as per section-58.

[Explanation 1: It shall not be a right of the accused to get his conveyance, item or premises released upon payment of the required penalty. The Collector, based upon a report by a police Officer or an Excise Officer, may, for reasons to be recorded in writing, still refuse to release the said conveyance, item or premises and proceed ahead with confiscation and auction/destruction.]

[Explanation 2: The Collector shall, from the date of this Amendment coming into force, close the on-going confiscation proceeding if the person concerned pays the penalty as notified and release such vehicle, conveyance or premises.]

[Explanation 3: Such release shall not affect the outcome of trial, if any, before the Special Court.]”

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 in terms of Rule 12(B) and 57(B) inserted by amending Bihar Prohibition and Excise Rules, 2021.

Liberty reserved to petitioner to approach this Court for same and subsequent cause of action, if need so arises.

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

(Sanjay Karol, CJ)

(S. Kumar, J)

veena/rajiv-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	