

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6634 of 2022

Prity Devi @ Prity Singh wife of Sunit Kishor @ Happi Singh, D/o- Nagina Singh, resident of Village- 67A Uplate House, Maurya Patha, Nandan Puri, P.S.- Rajeevnagar, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department, Bihar, Patna.
2. The Excise Commissioner, Government of Bihar, Patna.
3. The Collector-Cum- District Magistrate, Patna.
4. The Superintendent of Police, Patna.
5. The Excise Superintendent, Patna.
6. The Circle Officer, Patna Block, District- Patna.
7. The District Registrar, Patna.
8. The Officer-in- Charge, Rajeev Nagar, P.S.- Rajiv Nagar, District- Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar, Advocate
For the Respondent/s	:	Mr. Kumar Manish, SC-5

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 10-05-2022

Heard learned counsel for the parties.

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

- (i) For issuance of any appropriate writ or writs, Rule of direction especially in the nature of mandamus, directing the Respondents concerned to release the one of the room of dripple story building situated at Ram Nagari Sector-4, under the police Station of

Rajeev Nagar district Patna which has been seized and sealed in connection with Rajeev Nagar PS. Case no. 542 of 2021, corresponding to G.R. No. 7848/2021, registered u/s 37(c)/30(a) of Bihar Prohibition and Excise Amendment Act 2018 for which no confiscation proceeding has been initiated till the date.

- (ii) For issuance of any appropriate writ or writs, Rule or direction, directing the respondent District Magistrate to release the one room of Double story building under the provision of section 12A, and 12B of the Bihar prohibition and Excise amendment Act 2022 as petitioner is ready to pay the penalty awarded by the respondent District Magistrate.
- (iii) For issuance of any appropriate writ or writs, Rules or direction as this Hon'ble Court may found fit and proper to the facts and circumstances of the case as well as for which petitioner may be found entitled there to.

Allegation is recovery of 25.93 litre of illicit foreign liquor from one room of Double Storeyed building.

During pendency of confiscation proceeding, excise Act 2018 stands amended and provision has been made under Section 12(B) of the amended Rules for release of seized premises on paying penalty. The relevant Rule 12B and 57B reads as follows:-

"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 said view of the matter, the writ petition is disposed of with liberty to get his/her house unsealed in terms of the amended provision 12(B) of the Bihar Prohibition & Excise (Amendment) Rules, 2022. It is made clear that this Court has not expressed any opinion with respect to merit of case.

Liberty reserved to the petitioner to take recourse to such remedies as are otherwise available in accordance with law if the need so arises subsequently.

(Sanjay Karol, CJ)

(S. Kumar, J)

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