

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.590 of 2022

Arising Out of PS. Case No.-164 Year-2021 Thana- BARBIGHA District- Sheikhpura

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VINOD KUMAR S/o Nand Kishor Prasad R/o Mohalla- Koyaribigha, P.S.-
Barbigha, Distt.- Sheikhpura

... .. Petitioner

Versus

1. The State of Bihar through Secretary, Home Department, Govt. of Bihar, Patna Bihar
2. The District Magistrate Sheikhpura P.S. and Distt.- Sheikhpura Bihar
3. The Sub- Divional Magistrate Sheikhpura, P.S. and Distt.- Sheikhpura Bihar
4. The Superintendent of Police Sheikhpura, P.S. and Distt.- Sheikhpura Bihar
5. The Police Inspector-cum-Officer in Charge Barbigha, P.S.- Barbigha, Distt.- Sheikhpura Bihar

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Dr. Anjani Pd. Singh, Advocate
For the Respondent/s : Mr. Iqbal Asif Niazi, AC to GP 5

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

5 06-09-2022 Since the pleadings are complete in this case, with the consent of the parties this application has been taken up for final disposal.

Petitioner in the present case is seeking setting aside of the order dated 11.04.2022 passed by the learned Chief Judicial Magistrate, Sheikhpura in Barbigha P.S. Case No. 164 of 2021. By the impugned order, the learned Magistrate has refused to direct the unsealing of the Adarsh Utsav Hall and Restaurant.

Learned counsel for the petitioner submits that as per



the prosecution story, a raid was conducted on 09.06.2021 in the premises of the said Utsav Hall. It is alleged that one woman and 5 men were arrested with several incriminating materials.

It is alleged that the owner of the premises (the petitioner) was using the said hotel/hall as a brothel house and was found engaged in negotiating with some customers. The Utsav Hall and Restaurant was sealed and the apprehended accused were taken into custody.

Learned counsel for the petitioner submits that a case giving rise to Barbigha P.S. Case No. 164 of 2021 has been registered under Sections 4/5/6/7 of the Suppression of Immoral Traffic In Women and Girls Act, 1956 (hereinafter referred to as the 'Act of 1956'). In this case the investigation is complete and police has submitted a chargesheet. The case is still pending at the stage of appearance.

It is submitted that on 27.08.2021 the petitioner being owner of the premises filed an application in the court of learned Chief Judicial Magistrate, Sheikhpura, requesting the court to direct the concerned authorities to unseal the premises and allow the petitioner to run his business. The learned C.J.M. called for a report from the officer in-charge of the police station, perused the records and took a decision that because the



investigation of the case is still pending, no direction may be issued for unsealing of the premises. On this ground, the application dated 27.08.2021 has been rejected.

Learned counsel for the petitioner submits that earlier this Court had granted time to learned counsel for the State to examine the scheme of the Act of 1956. This Court had specifically called upon the State to inform as to whether any proceeding in terms of Section 18 of the Act of 1956 has been initiated in this matter. The submission is that in the supplementary counter affidavit which has been filed in compliance with the order dated 18.08.2022 passed by this Court, no specific statement has been made that a proceeding under Section 18 of the Act of 1956 has been initiated.

It is submitted that in such circumstances, since the Utsav Hall and Restaurant has remained under seal for 1 year 2 months and no proceeding for attachment of the same has been initiated by the competent authority, this Court may consider release of the Hall and the Restaurant subject to result of the case pending in the learned court below.

Mr. Iqbal Asif Niazi, learned AC to GP 5 submits on the strength of the statements made in paragraphs 9 and 10 of the supplementary counter affidavit that the Utsav Hall has been



sealed by the Circle Officer, Barbigha in accordance with law in the light of the order of the Sub Divisional Magistrate, Sheikhpura.

Attention of this Court has been drawn towards Annexure A to the supplementary counter affidavit. In course of the argument having gone through the scheme of the Act of 1956 and the specific provision of Section 18 of the said Act, learned counsel for the State submits that so far as Section 18 proceeding is concerned, till date there is no material to suggest that any notice calling upon the petitioner to show cause as to why the property in question be not attached has been issued.

Having regard to the facts and circumstances of the case and to the scheme of Section 18 of the Act of 1956, this Court finds that till date there is no material to suggest that any notice has been served upon the petitioner calling upon him to show cause as to why the Utsav Hall and Restaurant be not attached for improper use thereof. The Executive Magistrate has not initiated any such action in terms of sub-section (1) of Section 18. So far as sub-section (2) of Section 18 is concerned, no action thereunder may be taken at this stage and any occasion for taking action under that sub-section would arise only when the court convicts the person/petitioner for an offence



under Section 3 or Section 7 of the Act of 1956.

In these circumstances, this Court is of the considered opinion that the Utsav Hall and Restaurant cannot be kept under seal for an indefinite period. It is already lying under sealed condition for 1 year 2 months.

This Court, therefore, directs the respondent no. 3 to take steps towards unsealing of the Utsav Hall and Restaurant and handing over it to the petitioner within a period of 7 days from the date of receipt/communication of this order.

It is made clear that the order directing unsealing of the premises shall not come in the way of the authorities/court, as the case may be, from taking any lawful action in accordance with law.

This application stands disposed of with the aforesaid directions and observations.

(Rajeev Ranjan Prasad, J)

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

