

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1107 of 2016

Arising Out of PS. Case No.-253 Year-2016 Thana- KHAJEKALA District- Patna

Mohd. Rizwan Son of Late Md. Sayed Resident of Ghat Road, Khagekalan,
Police Station- Khagekalan, District Patna.

... .. Petitioner/s

Versus

1. The State Of Bihar, Through Principal Secretary, Home Department, Government Of Bihar, Patna and Or
2. The Director General of Police, Bihar, Patna.
3. The Inspector General, Patna Zone, Patna.
4. The Deputy Inspector General, Central Range, Patna.
5. The District Magistrate, Patna.
6. The Senior Superintendent of Police, Patna.
7. The Superintendent of Police, East, Patna.
8. The Sub-Divisional Police Officer, Patna City, District Patna.
9. The Station House Officer, Khajekalan, District Patna.
10. Executive Magistrate, Patna City, Patna.
11. Controller of Explosives, Govt. of India, PESO, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	M. Ramakant Sharma, Sr. Advocate Mr. Md. Fazle Karim, Advocate
For the State	:	Mr. Md. Irshad, AC to SC 1 Md. Harun Qureshi, AC to SC 1
For the UOI	:	Mr. Kumar Priya Ranjan , CGC Mr. Pallav, Advocate

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

11 29-04-2022 Heard learned senior counsel for the petitioner,

learned counsel for the State and learned counsel for the Union

of India.

The petitioner has filed the instant application praying
for quashing the FIR of Khazekalan P.S. Case no. 253 of 2016,
for quashing the search and seizure dated 7-8.10.2016, for



directing the respondents to release the seized goods and residential premises and for other reliefs.

The facts in brief are that an FIR being Khazekalan P.S. Case no. 253 of 2016 was registered under sections 285, 286 and 290 of the Indian Penal Code, sections 5A and 9B of the Explosives Act, 1984 and section 5 of the Explosive Substance Act, 1908.

The prosecution case in brief is that by letter no. 5493 dated 31.5.2016 the District Magistrate, Patna directed the Sub-Divisional Officer, Patna City to inspect the shop selling crackers. Pursuant to the notice issued by the Sub-Divisional Officer and the Sub-Divisional Police Officer, Patna City only seven shopkeepers responded to the notice. After obtaining information inspections were conducted on different shops being run by six different persons including the petitioner herein. On inspection of shop of the petitioner it transpired that three licences had been issued to him in the year 1967, 1987 and 1991 by the licensing authority but no objection certificate was not obtained from the District. In the search/inquiry conducted it transpired that while the petitioner had licence for 1200 kgs of chinese crackers and/or sparkles and 300 kgs of fireworks, the quantity of crackers etc stored in the shop was much beyond the



permissible limit. Further there was residential premises over the shop in which the crackers had been stored. The accused persons had abandoned their shops and had gone away and as such the shops were sealed and the FIR registered.

Learned senior counsel appearing for the petitioner submits that from reading of the entire contents of the FIR no offence whatsoever is made out against the petitioner and it is for this reason that no charge sheet has been filed even after five years of registration of the case. It is submitted that at best it is a case of violation of the terms of the licence. Learned senior counsel submits that the search and seizure also being illegal, both the FIR as also search and seizure dated 7/8.10.2016, both be quashed. Further prayer is made for release of goods as also for unsealing of the residential premises.

It is submitted by learned counsel appearing for the State that on 7/8.10.2016 the residential house of the petitioner was searched in presence of the Sub-Divisional Officer, Patna City, the A.S.P, Patna City, the Executive Magistrate, Patna City as also the S.H.O and I.O of the case of Khazekalan Police Station. On search including the boxes used for packing, crackers to the tune of more than 10,000 kgs (approx) were found stored in the residential house of the petitioner.



Accordingly, a seizure list was prepared. Written intimation was given by the Investigating Officer to the Explosive Controller, Patna.

It is submitted by learned counsel appearing on behalf and the respondent no. 11 that the petitioner is a valid licence holder having three licences which were issued in the year, 1990, 1987 and 1987 and were renewed by the authority from time to time according to the Explosive Substance Rules, 2008.

Heard learned counsel for the parties and perused the materials on record. Although the petitioner is said to be the holder of a licence, the case of the prosecution is that the petitioner was holding/storing in his shop which is just below the residential premises, huge quantity of crackers which was much beyond the quantity permitted in the three licences granted to him. Thus, the Court finds no merit in the prayer made on behalf of the petitioner for quashing of the FIR and the search and seizure. The same is rejected.

It may be stated here that learned senior counsel appearing for the petitioner in support of his contention relies on the order of this Court dated 14.3.2018 passed in Cr.WJC no. 2661 of 2017 (Md. Shaukat Ali vs. the State of Bihar), relevant portion of which is quoted herein below.

“This Court directs that the shop in



question be provisionally de-sealed in favour of the petitioner on production of document of title of the property. However, before de-sealing, a photograph of the shop in sealed condition and Panchnama shall be prepared by the police officer and the Executive Magistrate of the area in presence of the petitioner. After opening the seal, a complete seizure list will be prepared in presence of two independent witnesses as also in presence of the petitioner who will be handed over a copy of the seizure list at the spot itself.

Petitioner undertakes not to deal with any illegal act in the said shop/premises and shall not alienate the property or create any kind of interest adverse to the interest of the State during the pendency of the criminal case in the trial court.

The writ application stands disposed of with the directions mentioned above.”

The instant application is disposed off on the same terms and directions as passed by this Court in the case of Shaukat Ali (supra), as quoted herein above.

This application stands disposed off.

(Partha Sarthy, J)

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