

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5305 of 2023

1. Mohan Kumar @ Shiv Mohan Rai, Male, aged about 35 years, Son of Chadra Dev Rai, Resident of Village- Gosai Tola New Shiv Mandir, Police Station- Patliputra, District- Patna (Bihar).
2. Lal Mohan Kumar, Male, aged about 34 years, Son of Chadra Dev Rai, Resident of Village- Gosai Tola New Shiv Mandir, Police Station- Patliputra, District- Patna (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise and Prohibition Department, Government of Bihar, Patna.
2. The Commissioner, Excise, Registration Excise and Prohibition Department, Government of Bihar, Patna.
3. The District Magistrate, Patna.
4. The Superintendent of Police, Patna.
5. The In-Charge-Cum-S.H.O. of Patliputra Police Station, Patna, Bihar.
6. The Investigating Officer, Patliputra Police Station, Patna.
7. The Branch Manager State Bank of India, Patliputra Branch, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Ayush Kumar, Advocate Mr. Abhijeet Gautam, Advocate Mr. Vivek, Advocate Mr. Kanishak Shanker, Advocate Mr. Kanishak Kavstabhi, Advocate
For the Respondent/s	:	Mr. Vikash Kumar, SC 11 Mr. Akash Chaturvedi, Advocate
For the Bank	:	Mr. Apurv Harsh, Advocate Mr. Uday Pratap Pusukal Advocate

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAMESH CHAND
MALVIYA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 08-12-2023

In the instant petition petitioners have prayed for the following reliefs:-



“i. For issuance of writ/s, order/s, direction/s in the nature of Mandamus, commanding the respondents to immediately desal the petitioner’s saving bank account in State Bank of India, Patliputra, Branch bearing AC No. 20008897434 and 32525345919 in the name of Mohan Kumar @ Shiv Mohan Rai (Petitioner No. 1) and Lal Mohan Kumar (Petitioner No. 2) respectively which has been seized/sealed in connection with Patliputra PS Case No. 322 of 2022 dated 06.06.2022 instituted for the offence under Section 30(a)/41(i)/37 of the Bihar Prohibition and Excise Act 2016 without initiating any confiscation proceeding as well as in teeth of provision of Bihar Prohibition and Excise Act, 2016.

ii. For further issuance of direction to pay a suitable compensation to the petitioners because the Bank account of the petitioner has been illegally seized/sealed by the police and bank officials in teeth of Bihar Prohibition and Excise Act, 2016.

iii. For further any other relief/s, order/s, direction/s may deem fit and proper in the facts and circumstances of this case.

2. On 06.06.2022, an FIR has been filed in Patliputra P.S. Case No. 322 of 2022 against the petitioners for the offence under Sections 30(a)/41(i)/37 of the Bihar Prohibition and Excise Act, 2016. Petitioners were stated to have been enlarged on bail. Petitioner nos. 1 and 2 are holders of Saving Account No. 20008897434 in the State Bank of India, Patliputra Branch, Patna and the 2nd petitioner Saving Account No. 32525345919 of the State Bank of India, Patliputra Branch, Patna. The Investigating



Officer directed the aforementioned Bank Branch to freeze their account on 18.07.2022. The respondent-Bank have freezed the SBI account number cited supra and so also certain fixed deposit receipts have been freezed. The reasons in directing the concerned Bank to freeze the Bank account of the petitioner nos. 1 and 2 may be that depositing of money in Bank Account is with reference to alleged illegal activities of Excise offences under the Excise Act.

3. Thus, the petitioners have prayed for the aforementioned reliefs.

4. Learned counsel for the petitioners submitted that before freezing their respective bank account and fixed deposit receipt they have not been heard in other words they are entitled to notice. It is further submitted that ingredients of Section 102 has not been complied by the Investigating Officer. On these counts the impugned action of the respondents are liable to be set aside and writ petition is to be allowed.

5. Per contra, learned counsel for the respondent-State resisted the aforementioned contentions and submitted that petitioners are all involved in the alleged offences under the Excise Act and they are illegally making money and depositing them in the Bank for the purpose of various bank transaction including keeping certain amount in the fixed deposit. Therefore there is no



infirmity in the impugned action. It is also submitted that grievance of the petitioners cannot be redressed under Article 226 and they have a remedy under Section 457 of the Criminal Procedure Code before the jurisdictional Court. It is also submitted that all the ingredients under Section 102 of the Criminal Procedure Code has been adhered except in not furnishing report to the jurisdictional Magistrate.

6. Heard learned counsel for the respective parties. Undisputed facts are that the petitioner nos. 1 and 2 are involved in the alleged offence under Sections 30(a)/41(i)/37 of Bihar Prohibition and Excise Act, 2016 in P.S. Case No. 322 of 2022 dated 06.06.2022, Patliputra Police Station, Patna and proceedings are still pending consideration. The Investigating Officer is of the view that certain money transactions made through their respective Bank account and depositing certain amount in fixed are all arising out of illegal money got through certain alleged offences under the Excise Act, therefore, it is necessary to freeze the Bank account including fixed deposit receipts which were standing in the name of the petitioners.

7. Learned counsel for the petitioners submitted that petitioners are entitled to notice before freezing of their respective account including freezing of fixed deposit receipt. Learned



counsel for the petitioners has not pointed out any statutory provision to the extent that before freezing of any Bank account arising out of criminal proceedings that such persons were to be heard in the matter. On the contrary, Section 102 empowers the Investigating Officer to take certain action. It is necessary to reproduce Section 102 of the Criminal Procedure Code and its reads as under:-

“102. Power of police officer to seize certain property.”-(1) Any police officer may seize any property which may be alleged or suspected to have been stolen, or which may be found under circumstances which create suspicion of the commission of any offence.

(2) Such police officer, if subordinate to the officer in charge of a police station, shall forthwith report the seizure to that officer.

(3) Every police officer acting under sub-section (1) shall forthwith report the seizure to the Magistrate having jurisdiction and where the property seized is such that it cannot be conveniently transported to the Court or where there is difficulty in securing proper accommodation for the custody of such property, or where the continued retention of the property in police custody may not be considered necessary for the purpose of investigation, he may give custody thereof to any person on his executing a bound undertaking to produce the property before the Court as and when required and to give effect to further orders of the Court as to the disposal of the same.

[Underline supplied]



Provided that where the property seized under sub-section (1) is subject to speedy and natural decay and if the person entitled to the possession of such property is unknown or absent and value of such property is less than five hundred rupees, it may forthwith be sold by auction under the orders of the Superintendent of Police and the provisions of Sections 457 and 458 shall, as nearly as may be practicable, apply to the net proceeds of such sale.

8. Reading of the aforementioned provisions it is crystal clear that it mandates Investigating Officer to submit report to the Jurisdictional Magistrate forthwith. This ingredient has not been complied on behalf of the Investigating Officer and it is admitted by the learned counsel for the respondent-State on instruction.

9. Learned counsel for the State submitted that writ petition is not maintainable, since petitioners have a remedy under Section 457 of Cr.P.C. in so far as getting certain relief in respect of freezing of their respective account including fixed deposit receipt. The aforementioned contention would have been appreciated provided the Investigating Officer complied Section 102 to the extent of submission of report forth with to the Jurisdictional Magistrate. The same is not forthcoming. Question of relegating the petitioners to invoke Section 447 is not warranted in the present case in view of the fact that Investigating Officer has failed to comply one of the ingredient under Section 102 and it



will go to the root of the matter in other words there is a violation of statutory provision in such circumstances writ Court can interfere even though petitioners have alternative remedy.

10. Accordingly, the petitioners have made out a case so as to interfere with the impugned action dated 06.06.2022, and it is set aside and ordered for defreezing of respective freezed accounts including fixed deposit receipt, both petitioners shall execute Bank guarantee before the jurisdictional Court thereby under taking to produce amount in the Court, as and when required by the Court and also to the extent that if any such order is made by the Court regarding disposal of the same, the same shall be complied with jointly and severely by them.

11. The petition is allowed in the above terms. Pending Interlocutory Applications, if any, stand disposed of.

(P. B. Bajanthri, J)

(Ramesh Chand Malviya, J)

Anand Kr.

AFR/NAFR	AFR
CAV DATE	
Uploading Date	18.12.2023
Transmission Date	

