

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6168 of 2023

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Ashok Kudail, S/o Late Chaudhary Kudail, R/o Village-Barari, Santhali Tola,
P.S.-Barari, District-Katihar.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Excise Department,
Government of Bihar, Patna.
2. The Commissioner, Excise Department, Government of Bihar, Patna.
3. The District Magistrate-cum-Collector, Katihar.
4. The Superintendent of Police, Katihar.
5. The Sub Divisional Magistrate, Katihar.
6. Sub-Divisional Police Officer, Sadar, Nalanda, Bihar.
7. The S.H.O. Barari P.S. P.S.-Barari, District-Katihar.

... .. Respondent/s

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Appearance :

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

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 28-04-2023

1. The petitioner is concerned with the confiscation of his premises in Mauza-Barari, Thana No. 254, Khata No. 725, Khesra No. 884, Area 0.16 dismal, from where 15 litres of country made liquor was recovered. An FIR was registered on 11.09.2021 as Barari P.S. Case No. 217 of 2021 and confiscation proceedings were also initiated. The confiscation proceedings ended with Annexure-3 order dated 29.10.2022.

2. The petitioner has filed an application under Rule



12B of Bihar Prohibition and Excise Rules, 2021 (hereinafter referred to as 'Rules') before the confiscation authority.

3. The Sub-Divisional Magistrate, considering the said application, ordered release of the premises on deposit of Rs. 19 lakh and 20 thousand. The petitioner is concerned with the penalty imposed which according to the petitioner is very excessive.

4. The learned Government Pleader submits that considering the value and locality of the property, as also the quantity of recovery, the penalty was imposed at a higher amount. It is submitted that the discretion exercised by Sub-Divisional Magistrate cannot be said to be excessive.

5. We have looked at the order passed by the Sub-Divisional Magistrate, wherein there is absolutely no consideration of the economic status of the individual, the nature of his involvement in the crime, location of the premises and the quantum of intoxicant recovered, which are all aspects to be considered by the District Collector or the officer authorised by him, in imposing the penalty under Rule 12B, which is specifically delineated in Sub-Rule (2). We find that no such consideration has been made by the Sub-Divisional Magistrate and hence the discretion is improper and not in



accordance with the statutory rules. We hence set aside the order.

6.The Sub-Divisional Magistrate shall issue a fresh notice to the petitioner and the petitioner is also entitled to place on record the evidence regarding his economic status and also the value of land in the locality. Sub-Divisional Magistrate shall pass a speaking order specifically looking at the aspect of sub-rule (2) of Rule 12B, as we noticed hereinabove.

7.The petitioner shall produce a copy of this judgment before the Sub-Divisional Magistrate within a period of two weeks and shall produce further evidence, if required, within a further period of two weeks. Petitioner shall be heard and order shall be passed, in any event, within three months from the date of receipt/production of the certified copy of this order.

8. Writ petition is disposed of.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

Sumit/Shashank-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.05.2023
Transmission Date	NA

