

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12728 of 2018

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Sanjeev Kumar, Son of Ghan Shyam Singh, Resident of Village- Maur, Police Station- Barbigha, District- Sheikhpura.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Department of Excise, Government of Bihar, Patna.
2. The District Magistrate, Sheikhpura.
3. The Senior Superintendent of Police, Sheikhpura.
4. The Officer-in-Charge-cum-S.H.O., Barbigha Police Station, Barbigha, Sheikhpura.
5. The Investigating Officer, Barbigha, District- Sheikhpura.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Bipin Kumar, Advocate
For the Respondent/s	:	Mr.Vivek Prasad, GP-7
		Ms. Supragya, AC to GP-7

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI

and

HONOURABLE MR. JUSTICE ARUN KUMAR JHA

CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE ARUN KUMAR JHA)

Date : 18-09-2023

Learned counsels for the respective parties have been heard on the last date of hearing.

2. The petitioner has filed the instant writ petition for a direction to the respondent authorities to unseal/unlock the house of the petitioner, which has been sealed/locked by the



respondent authorities in connection with Excise Case No.741 C2/2017 dated 30.10.2017, instituted under Section 30 (a) of Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as 'the Act') against the son of the petitioner.

3. Briefly stated, the case of the petitioner is that on the basis of secret information received by the Excise Department that in the house of accused Piyush Kumar @ Bittu, son of the petitioner, huge quantity of India made foreign liquor was illegally stored, a raid was conducted in that house and total 720 liters of India made foreign liquor was recovered from two rooms of the said house and the house was locked by the excise officials. Thereafter, Excise Case No.741 C2/2017 has been registered under Section 30 (a) of the Act against Piyush Kumar, son of the present petitioner. Aggrieved by the action of the respondent authorities in sealing/locking the house and starting/initiating the confiscation proceeding against it, the petitioner has come before this Court for release of his house.

4. The learned counsel appearing on behalf of the petitioner submitted that from bare perusal of the complaint, it is evident that the petitioner is not named in the complaint case. The son of the petitioner has been made accused in the complaint case. The learned counsel further submitted that the



petitioner is bonafide owner of the house in question and has filed documents in support of his claim. The action of the respondent officials is arbitrary and illegal in view of the fact that in two rooms, alleged liquor was recovered but the entire house was sealed. The learned counsel further submitted that apart from named accused, other persons are also residing in the house and due to locking and sealing of entire house, all the inmates are facing a problem. The learned counsel further submitted that on 18.04.2018, the petitioner has received a notice dated 18.04.2018 in Confiscation Case No. 28 of 2018. The learned counsel further submitted that there is not even an iota of evidence which could suggest that the petitioner was facilitating the culprits or providing access for storage of incriminating articles. Either directly or indirectly, the petitioner has not contravened Section 30 of the Bihar Prohibition and Excise Act, 2016 and for this reason his house is not liable to be sealed. The action of the authorities is arbitrary, unreasonable and shows complete non-application of mind. Thus, the learned counsel submitted that the instant writ petition may be allowed and the relief sought by the petitioner may be granted to him.

5. *Per contra*, the learned counsel for the respondents submitted that the son of the petitioner is named in the official



complaint case for recovery of illicit India made foreign liquor from the house of the petitioner. Moreover, only two rooms, from where recovery has been made, have been sealed. Thus, the learned counsel submitted that there is no merit in the instant writ petition and the same be dismissed.

6. Perused the record.

7. From perusal of records, it appears that the present case has been filed on 05.07.2018 after serving a copy of the same upon the State on 16.08.2018. But when no counter affidavit has been filed by the State, the matter was adjourned on 24.04.2023 and 08.08.2023. Despite the aforesaid adjournments, no counter affidavit has been filed by the State. Now this Court is required to decide the matter on the material available on the record without waiting further for the counter affidavit.

8. *Prima facie*, it appears from the perusal of the official complaint that though the premises owned by the petitioner may be involved in storage of illicit liquor, apparently involvement of the petitioner is not so forthcoming from the facts and circumstances of the case. Moreover, the son of the petitioner has been arraigned as an accused and he will have to face rigours of trial and final decision of his innocence/guilt has



to be taken by the learned trial court. Further, it appears from the records that a confiscation proceeding vide Confiscation Case No.28 of 2018 has been initiated for confiscation of the house of the petitioner in which a notice dated 18.04.2018 has been issued to the son of the petitioner to appear before the Collector, Sheikhpura on 27.04.2018.

9. Further, there is no material on record which could suggest that the petitioner was facilitating and helping his accused son for storage of incriminating articles. Either directly or indirectly, the petitioner has not contravened Section 30 of the Bihar Prohibition and Excise Act, 2016 and for this reason his house is not liable to be sealed.

10. Recently, this Court vide judgment dated 14.09.2023 passed in CWJC No.17894 of 2022 (Sunita Sinha vs. The State of Bihar and Ors.) has deprecated the tendency of the authorities to confiscate the premises found involved in trade of illicit liquor in an arbitrary manner and putting unreasonable terms and conditions for its release and we further pointed out the lacunae in the relevant provisions of law regarding seizure, sealing and confiscation of premises. Apparently, the case of the petitioner is covered under one of the illustrations given by us.



11. Since the petitioner is claiming to be the owner of the sealed house, it is directed that pending finalization of the confiscation proceedings, the aforesaid house of the petitioner shall be unsealed and possession be handed over to him subject to undertaking that he will not alienate or deal with the property in question or create a third party interest during the pendency of the confiscation proceedings or prejudice the right of the State in the confiscation proceedings, if the same has not already been completed.

12. However, it is made clear that this order would not be a hurdle either for the State to proceed with the confiscation proceeding or for the petitioner to avail his rights in such proceedings. Both the parties are at liberty to proceed in the matter in accordance with law. The confiscating authority is directed to examine whether confiscation proceedings are in accordance with the procedure prescribed under the Excise Act or not, since such proceedings are time bound. Further, the petitioner was heard in such matter or not, since confiscation of premises has a civil consequences. On this issue, concerned authority is directed to take note of recent decision of the Hon'ble Supreme Court viz., ***State Bank of India and Ors. v. Rajesh Agarwal and Ors., (2023) 6 SCC 1.***



13. With the aforesaid observations and directions,
this writ petition stands allowed.

(P. B. Bajanthri, J)

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	AFR
CAV DATE	11.09.2023
Uploading Date	18.09.2023
Transmission Date	N.A.

