

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17974 of 2022

=====

Kailash Keshari @ Kailash Pd. Keshari S/o - Bhola Pd. Keshari, R/o - Falka, Ward
No. - 8, P.S. - Falka, Distt. - Katihar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Deptt, Bihar.
2. The Commissioner, Excise, Bihar, Patna.
3. The Principal Secretary, Excise, Bihar, Patna.
4. The Collector cum District Magistrate, Katihar.
5. The Superintendent of Police, Katihar.
6. The Sub Divisional Officer, Katihar.
7. The Circle Officer, Falka, Katihar.
8. The S.H.O., Falka, Katihar.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Sanjeev Kumar Singh, Advocate
For the Respondent/s : Mr.Kumar Manish (SC 5)

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 27-04-2023

The petitioner is aggrieved with orders dated 12.11.2021, 01.02.2022 and 11.07.2022 passed in his Confiscation Case No. 57 of 2021, Excise Appeal Case No. 58 of 2022 and Excise Revision Case No. 167 of 2022, respectively.

2. In the present case, the revisional authority has directed the petitioner to file an application under Rule 12B of the Bihar Prohibition and Excise Rules, 2021 (for short "Rules") before the District Collector and has also imposed the penalty of Rs. 5 lakhs.

3. The discretion to impose penalty under Rule 12B of the Rules is on the District Collector and the revisional authority



has usurped the authority of the District Collector and imposed the penalty by himself, which is bad in law.

4. In such circumstances, we set-aside the order imposing the penalty of Rs. 5 lakhs and direct the petitioner to approach the District Collector with an application under Rule 12B of the Rules, which shall be considered within a period of two weeks from its filing. The District Collector, while exercising the discretion, shall definitely look into the factors to be considered under sub-rule (2) of Rule 12B of the Rules and the discretion shall be exercised properly.

5. The petitioner would be left with remedy to challenge discretion exercised by the District Collector, insofar as the determination of the penalty is concerned. If the petitioner is ready and willing to pay the penalty, the premises should be absolved of the confiscation proceedings and released to the petitioner immediately on payment of penalty.

6. Writ petition is disposed of.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

shashank/sumit-

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

