

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18430 of 2023

Abhishek Yadav @ Abhishek Kumar Son of Late Munna Prasad Yadav
Resident of near Devi Asthan, Bhanwar Pokhar, P.S.-Pirbahore, District-Patna
Presently Owner/Manager Paradish INN Hotel, Situated at 214/A, Patliputra
Colony (Old), Patna (Bihar-800013).

... .. Petitioner/s

Versus

1. The State of Bihar
2. The Excise Commissioner, Excise Department Govt. of Bihar, Patna.
3. The District Magistrate-Cum-Collector, Patna.
4. The Senior Deputy Collector, Patna.
5. The Excise Superintendent, Patna.
6. The Superintendent of Police, Patna.
7. The Station House Office (S.H.O.), Patliputra P.S., District-Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. SK Lal, Advocate Mr. Pramod Kumar, Advocate
For the Respondent/s	:	Mr. Jitendra Kr. Roy (SC-13) Mrs. U.K. Singh AC to SC-13

CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE P. B. BAJANTHRI)

Date : 17-02-2024

In the instant petition, petitioner has prayed for the following reliefs:-

" That this writ petition is being filed for quashing order dt 04-09-2023 passed in Excise Revision No. 33/2023 by Court of Excise Secretary, Bihar Patna as well as order dt 22- 05-2023 passed Excise Appeal case No,49/2023 passed by the Excise Commissioner, Bihar, Patna , by which the appellate authority was pleased to dismiss the appeal, filed on behalf of the petitioner and affirmed the



order dated 06-03-2022 passed by District Magistrate-cum-Collector, Patna in Confiscation case No. 3422/2021-22 (State Versus Mukesh Kumar), arising out Patliputra P.S.case No. 537/2021 dated 24-10-2021 registered for offence section 30(a) of Bihar Prohibition and Excise (Amendment)act, 2018, confiscating the sealed Room no. 303 of Flat No. 302 of Paradise Inn Hotel of the Petitioner and further directed to S.D.O. Patna Sadar to conduct the auction of the sealed Room No.303 of the appellant's hotel situated at Flat No. 302, of the Apartment, 214/A, Patliputra Colony (old), Patna and deposit the auctioned money in the government exchequer, and further prayed to issue a to the respondents to unseal the Room no. 303 in question in favour of the petitioner."

2. Room No. 303 of Flat No. 302 of Paradise Inn Hotel of the petitioner was alleged to have been involved for the offences under the Excise Act. It was concluded in respect of confiscation proceedings and Room No. 303 of Flat No. 302 was confiscated with effect from 24.10.2021 and even to this day, it is under confiscation. The alleged allegation is recovery of 3.4 litre of liquor from the room premises. Learned counsel for the Petitioner-owner of the Hotel submitted that if there is any misuse of the room by the customer in that event petitioner's premises can not be seized. Further, it is submitted that small quantity of 3.4 litres of liquor seized can not be compared with the seizure of the Room



No. 303 of Flat no. 302 permanently. In fact, petitioner has already under gone mental harassment as well as financial. In the light of the fact that from 24.10.2021, even to this day Room No. 303 of Flat no. 302 has not been utilized for the purpose of renting the said premises to his customers.

3. Be that as it may, the state have issued statutory rules in the year 2021 called Bihar Prohibition and Excise Rules, 2021 (for short 'Rules, 2021'). Under Rule 12-B, the concerned authority is empowered to examine whether confiscation premises or imposition of fine/penalty in terms of money is required to be examined. In this regard, petitioner is stated to have submitted application under Rule 12-B. If it is submitted or if it is not submitted, petitioner is at liberty to file application under Rule 12-B. On receipt of such Rule 12-B application, the concerned authority is here by directed to pass a detailed speaking order in so far as imposing penalty/fine in terms of monetary instead of proceeding to confiscate the subject matter of Room No. 303 of Flat No. 302 of Paradise Inn Hotel, having regard to the fact that recovery of liquor is not in huge quantity.

4. Accordingly, the impugned order dated 04.09.2023 passed by Excise Secretary, Bihar Patna in Revision No. 33 of 2023 and the order dated 22.05.2023 passed by Excise



Commissioner in Excise Appeal No. 49 of 2023 and also order dated 06.01.2022 passed by District Magistrate-cum-Collector, Patna Confiscation Case No. 3422/2021-22 stands set aside. Matter is remanded to the concerned authority to proceed to pass order under Rule 12-B of Rules, 2021 read with Amended Rules, 2022 and 2023. The above exercise shall be undertaken by the concerned authorities within a period of one month from the date of receipt of this order.

5. With the aforesaid observations, the present writ petition stands disposed of.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

asmit/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	21.02.2024
Transmission Date	N/A

