

Form No. J(2)

**HIGH COURT AT CALCUTTA
IN THE CIRCUIT BENCH AT JALPAIGURI
CONSTITUTIONAL WRIT JURISDICTION**

**Present:
The Hon'ble Justice Jay Sengupta**

WPA 1811 of 2024

Kaushik Paul @ Tumpa
-vs-
State of West Bengal & ors.

For the Petitioner	Mr. Krishnendu Sarkar Mr. Suman Sehanabis
For the State	Mr. Subir Kumar Saha, Ld. AGP Mr. Sumit Kumar
Heard on	: 10.03.2025
Judgment on	: 10.03.2025

Jay Sengupta, J.:

This is an application for setting aside the refusal to grant “no objection” for permission to carry out performances under Rule 239 of the West Bengal Excise (Foreign Liquor) Rules, 1998 and directing the respondent nos. 2 and 3 to forthwith re-evaluate the issue/grant “no objection” in accordance with the Rules and Guidelines laid down by the authorities.

Exception filed on behalf of the petitioner is taken on record. Copy of the same has been handed over to the learned counsel for the State.

Learned counsel appearing on behalf of the petitioner submits as follows. The petitioner was granted a no objection to hold performances under Rule 239 of the West Bengal Excise (Foreign Liquor) Rules, 1998 in April 2023. On October 6, 2023, an FIR was lodged against him before Matigara Police Station by one Mili Das. The petitioner obtained anticipatory bail from the Sessions Court, Darjeeling on October 18, 2023. Sometime later, in a month of May, 2024, the Commissioner of Police, Siliguri Police Commissionerate intimated his refusal for granting “no objection” under Rule 239. It is true that an FIR was registered against the petitioner being Matigara Police Station Case No. 822 dated 6th October, 2023 under Sections 417, 376 and 313 of the Indian Penal Code. However, in the said case, evidence is going on. First, there is no conviction as yet under such provision. Secondly, none of the offending section as referred to in Section 42 of the Bengal Excise Act, 1909 is contained in the said criminal case. Therefore, the authority granting licence, permit or pass under the Act could not have cancelled or suspended the same on such ground.

Learned counsel appearing on behalf of the State denies the allegations, relies on the impugned order and submits as follows. A charge sheet has already been submitted against the petitioner

under certain very grievous charges. As the alleged incident had taken place at the said premises in respect of which the “no objection” was being sought, the same was quite rightly refused by the concerned Commissioner.

Relevant portion of Section 42 of the Bengal Excise Act may be quoted as under:

“42. Power to cancel or suspend license, permit or pass.- (1) Subject to such restrictions as the State Government may prescribe by rule made under Section 85, sub-section (2), clause (i) the authority who granted any license, permit or pass under this Act may cancel or suspend it-

. . . .

(d) if the holder thereof is convicted of any offence punishable under this Act or any other law for the time being in force relating to revenue, or of any cognizable and non-bailable offence, or of any offence punishable under the Dangerous Drugs Act, 1930 (2 of 1930) or under the Trade and Merchandise Marks Act, 1958 (43 of 1958) or under any of sections 479 to 489 of the Indian Penal Code (XLV of 1860) or under the Medicinal and Toilet Preparations (Excise Duties) Act, 1955 (16 of 1955). Or,

. . . .”

First, the alleged criminal case against the petitioner does not involve any of the above referred charges.

Secondly, there is no conviction as yet on any charge, far less on the above mentioned charges.

Therefore, there was no occasion for the concerned police authorities not to grant “no objection” in terms of the Bengal Excise Act, 1909.

In view of the above, the impugned refusal to grant permission in terms of Rule 239 of the Rules is set aside and the matter is remanded back to the Commissioner for considering the matter afresh and for passing a reasoned order in accordance with law and as expeditiously as possible.

With these observations, the writ petition is disposed of.

As affidavits were not called for, allegations are deemed not to have been admitted.

Urgent Photostat certified copy of this order be supplied to the parties, if applied for, as early as possible.

(Jay Sengupta, J.)