

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11355 of 2024

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Brijlal Yadav @ Brijlal Prasad Son of Late Ramu Yadav Resident of Village
Tikuliapar, P.S. Kako District- Jehanabad.

... .. Petitioner/s

Versus

1. The State of Bihar through District Magistrate (Jehanabad) District-
Jehanabad.
2. The Superintendent of Police (Jehanabad), District- Jehanabad.
3. The Officer in charge (S.H.O) Kako Police Station, District- Jehanabad.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Sinha, Advocate
For the Respondent/s : Mr. Manoj Kumar Yadav, AC to G.A.-10

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA
CAV JUDGMENT

(Per: HONOURABLE MR. JUSTICE RAMESH CHAND MALVIYA)
Date : 05-12-2024

In the instant petition, petitioner has prayed
for following relief/s:-

*“...For directing the respondents to
release the money (Rs.2,24,200/-) to the petitioner
which has been seized by the police Officer, Kako
Police Station in a Police Raid from petitioner’s
house under Bihar Prohibition and Excise Act,
2018 bearing Kako P.S. Case No. 190 of 2021...”.*

2. Heard Mr. Sanjay Kumar Sinha, learned
counsel for the petitioner and Mr. Manoj Kumar Yadav, learned



A.C. to G.A.-10 for the State.

3. Learned counsel for the petitioner submits that cash cannot be seized under the provision of the Bihar Prohibition and Excise Act. He also submits that the said Act is silent on the question whether the seized cash can be released in favour of the petitioner or not. He submits that a direction is required by this Hon'ble Court for redressal of the grievances of the petitioner. He further submits that the present petitioner has also filed an application before District Magistrate, Jehanabad on 12.05.2023 as regards to redressal of his grievance.

4. Learned counsel for the respondents also conceded the submission of the petitioner and submitted that a direction may kindly be given by this Court as in a similar case the learned co-ordinate Bench of this Court has already been passed and an order on 18.04.2019 in CWJC No. 19300 of 2018 wherein directed to the concerned authority to release the confiscated amount of the petitioner.

5. It appears from perusal of order dated 18.04.2019 passed in CWJC No. 19300 of 2018 [annexed as Annexure R/5 (series) to the counter affidavit], where, the observation has been made is as follows:

“.....We have heard learned counsel for the parties and we have perused the



materials on record and examined the provisions of Section 58 of 'the Act' which nowhere empowers the Confiscating authority to confiscate any money found in possession of of a person charged with an offence under 'the Act'. The order is illegal because cash is not a prohibitory item under 'the Act' and thus could not have been confiscated by the Confiscating authority in purported exercise of power under the said 'Act'.

We accordingly quash the confiscation order dated 12.01.2018 passed in Confiscation Case N.5 of 2017 and direct the District Magistrate, Darbhanga to remit the amount in question to the petitioner with 48 hours on receipt/production of a copy of this order....”

6. In view of the submission as made by learned counsel for the parties and above observation as made in the order passed in C.W.J.C. No.19300 of 2018 on 18.04.2019, we are of the opinion that seizure of amount of Rs.2,24,200/- by Kako police station in connection with Kako P.S. Case No.190 of 2021 as well as the order dated 30.11.2022 passed in Excise Case No.1182 of 2021 in connection with Kako P.S. Case No.190 of 2021 by learned Exclusive Excise Judge-1, Jehanabad is not in accordance with law.

7. Accordingly, the seizure with regards to cash



of Rs.2,24,200/- in connection with Kako P.S. Case No.190 of 2021 as well as order dated 30.11.2022 passed in Excise Case No.1182 of 2021 in connection with Kako P.S. Case No.190 of 2021 by learned Exclusive Excise Judge-1, Jehanabad is set aside and the District Magistrate, Jehanabad is hereby directed to release the seized amount i.e. Rs.2,24,200/- to the petitioner, forthwith, from the date of receipt/production of a copy of the judgment with a condition that at the time of release of the seized amount, the District Magistrate, Jehanabad shall take an undertaking along with a surety bond of same amount i.e. Rs.2,24,200/- from the petitioner, subject to outcome of Excise offence cases.

8. Accordingly, the present writ petition is allowed.

(Ramesh Chand Malviya, J)

(P. B. Bajanthri, J)

Brajesh Kumar/-

AFR/NAFR	NAFR
CAV DATE	28.11.2024
Uploading Date	05.12.2024
Transmission Date	

