

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.16004 of 2025**

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Bhushan Mistri S/o Late Raj Kumar Mistri, Resident of Village- Azadshatru  
Nagar, PS- Rajgir, District- Nalanda.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Prohibition and Excise Department, Government of Bihar.
2. The Director General Police, Bihar.
3. The District Magistrate, Nalanda.
4. The Superintendent of Police, Nalanda.
5. Sub-Divisional Magistrate, Rajgir, District Nalanda.
6. The Circle Officer, Rajgir, District Nalanda.
7. The Station House Officer, Rajgir, District Nalanda.

... .. Respondents

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**Appearance :**

For the Petitioner : Mr. Shailendra Kumar, Advocate  
Mr. Ajit Ranjan Kumar, Advocate  
Mr. Surendra Kumar, Advocate  
For the Respondents : Mr. Indreshwar Pd. Mandal, AC to GA-3

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**CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH**  
**and**  
**HONOURABLE MR. JUSTICE ARUN KUMAR JHA**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH)**

**Date: 27-04-2026**

Heard the learned counsel for the parties.

2. The present writ petition has been filed for quashing the order dated 14.07.2025, passed by the learned Court of Sub-Divisional Magistrate, Rajgir in Confiscation (Excise) Case No. 31 of 2024, whereby and whereunder the room of the house of the petitioner, situated at Mauza-Rajgir, P.S. No.-485, appertaining to Khata No.-145, Khasara No.-4895 has been confiscated. It is also prayed to de-seal the room of the house of



the petitioner in favor of the petitioner.

3. The brief facts of the case are that the Sub-Inspector of Police posted at Rajgir Police Station was on patrolling duty along with Police force on 05.05.2024 at about 10:00 AM as also was engaged in conducting raid for recovery of illicit liquor. At about 02:00 PM, the Officer-in-charge of Rajgir Police Station informed the said Sub-Inspector of Police (informant) that the tenants of the house of the petitioner, namely Shrinath Kumar @ Shivrath Prasad @ Ramlal along with his son, Himansu Kumar @ Tutu are engaged in trade of illicit liquor as also they are engaged in delivering illicit liquor by their Scooty bearing registration No. BR 21S 5962. Thereafter, the informant along with the Police force had conducted a raid at the house of the petitioner, especially the room in occupation of the tenants of the petitioner at around 02:30 PM, whereafter search was made and 100 liters of illicit liquor as also 0.360 liters of illicit English liquor was recovered from the room in question apart from recovery of 0.735 liters of illicit liquor from the Scooty in question. On the basis of the written complaint of the informant, Rajgir P.S. Case No. 158 of 2024 dated 05.05.2024 was registered under Section 30 (a) of the Bihar Prohibition & Excise Act, 2016 (as amended up to



date) (hereinafter referred to as “Act, 2016”).

4. The learned counsel for the petitioner submits that it has been admitted in the FIR itself that the illicit liquor has been recovered by the Police from a room in possession of the tenants of the petitioner, hence admittedly the petitioner is not having any role to play in the alleged occurrence. It is further submitted that neither the petitioner nor his family members have been made accused in the aforesaid criminal case and moreover, the petitioner is not having any connection or relation with the accused persons who have been arrayed in the accused column in the aforesaid criminal case. It is next submitted that the aforesaid room in question is a part of the house of the petitioner situated at Mauza-Rajgir, P.S. No.-485, District- Nalanda, appertaining to Khata No.-145, Khasara No.-4895, which has been directed to be confiscated by the impugned order dated 14.07.2025. It is next submitted that that the said order dated 14.07.2025 has not taken into account the admitted fact that illicit liquor was seized from a room situated in the house of the petitioner from the tenants of the petitioner and not from the petitioner himself and that is why the petitioner has not been made an accused in the aforesaid criminal case. However, it is only the tenants, namely Shrinath Kumar @ Shivnath Prasad



and Himansu Kumar @ Tutu who have been made accused in the aforesaid criminal case. Thus, it is submitted that the impugned order dt. 14.7.2025, passed by the Ld. Court of Sub-Divisional Magistrate, Rajgir in Confiscation (Excise) Case No. 31/2024 is erroneous and fit to be set aside.

5. *Per contra*, the learned counsel for the respondents has submitted that a raid was conducted upon receipt of confidential information, whereupon huge quantity of illicit liquor was recovered from the room in question. However, it has not been denied that the recovery of illicit liquor was made from the tenants of the petitioner. Nonetheless, it is submitted that there is no infirmity in the impugned order dated 14.07.2025 passed by the learned Sub-Divisional Officer, Rajgir.

6. We have heard the learned counsel for the parties and perused the materials on record from which it is apparent that the present case arises out of Rajgir P.S. Case No. 158 of 2024, dated 05.05.2024 registered under Section 30(a) of the Act, 2016 against Shrinath Kumar @ Shivnath Prasad and Himansu Kumar @ Tutu, who are admittedly the tenants of the petitioner and were living in a room situated in the house of the petitioner from where illicit liquor, as aforesaid, has been recovered. At this juncture, we would like to advert to the provisions



contained in the amended Act, 2016, Section 30, 56, 57B and 58

being relevant are being reproduced herein below:-

***“30. Penalty for unlawful manufacture, import, export, transport, possession, sale, purchase, distribution, etc. of any intoxicant or liquor. –***

*Whoever, in contravention of any provision of this Act or of any rule, regulation, order made, notification issued thereunder, or without a valid license, permit or pass issued under this Act, or in breach of any condition of any license, permit or pass renewed or authorization granted thereunder-*

*(a) Manufactures, possesses, buys, sells, distributes, collects, stores, bottles, imports, exports, transports, removes or cultivates any intoxicant, liquor, hemp; or*

*(b) Constructs or establishes or works in any manufactory, distillery, brewery or warehouse; or*

*(c) Manufactures, uses, keeps or has in his possession any material, utensil, implement or apparatus, or uses any premises, whatsoever, for the purpose of manufacturing any intoxicant or liquor; or*

*(d) Manufactures any material or film either with or without the State Government logo or logo of any State or wrapper or any other thing in which liquor or intoxicant can be packed or any apparatus or implement or machine, for the purpose of packing any liquor or intoxicant; or*

*(e) Removes any liquor or intoxicant from any distillery, brewery, warehouse, other place of storage licensed, established, authorized or continued under this Act; or*

*(f) Manufactures, possesses, sells, distributes, bottles, imports, exports, transports removes, any preparation made with or without the use of any intoxicant or liquor, which can serve as an alcohol or a substitute for alcohol and is used or likely to be used or consumed for the purposes of getting intoxicated;*

*shall be punishable with imprisonment for the term which may extend to life and with fine which may extend to ten lakh rupees.*



*Provided that the punishment:*

*(a) For the first offence shall not be less than five years imprisonment and fine of not less than one lakh rupees, and*

*(b) For the second and subsequent offences shall not be less than ten years rigorous imprisonment and fine of not less than five lakh rupees".*

**56. Confiscation of Seized Items.-** *(1) Notwithstanding anything contained in Section 57B, whenever an offence punishable under this Act, is committed, the Collector or an Officer authorized by him may confiscate such items based on the report of the investigating officer.*

*(2) Such items may include-*

*(i) any premises or part thereof;*

*(ii) any animal, vehicle, vessel or conveyance;*

*(iii) any liquor or intoxicant;*

*(iv) any other item having bearing with the case;*

*Provided, where things as mentioned in Section 57 are to be destroyed, then the Collector or an officer authorized by him need not confiscate the same before their destruction.*

*(3) The State Government may issue necessary direction, guidelines, regulations and instructions with respect to the mode and manner of search, seizure, destruction and confiscation.*

**57B. Things or premises liable to be released upon penalty.-** *(1) Any animal, vehicle, vessel or other conveyance used for committing any offence punishable under this Act that has been seized by any police Officer or Excise Officer may be released by the Collector upon payment of such penalty as may be notified by the State Government.*

*2. Any premises or part thereof used for committing any offence punishable under this Act that has been seized by any police Officer or Excise Officer may be released by the Collector upon payment of such penalty as may be notified by the State Government.*



*(3) If the person concerned does not pay the penalty, then the Collector shall proceed to confiscate the said animal, vehicle, vessel or other conveyance and premises as per Section-58.*

**58. Confiscation by District Collector.** *(1) Notwithstanding anything contained in this Act or any other law for the time being in force, where anything liable for confiscation under this Act is seized or detained under the provisions of this Act, the officer seizing and detaining such property shall, without any reasonable delay submit a report to the District Collector who has jurisdiction over the said area;*

*(2) On receipt of the report under subsection (1), the District Collector if satisfied that an offence under this Act has been committed, may, whether or not prosecution is instituted for the commission of such an offence and whether or not a case is pending before any court, order confiscation of such property;*

*(3) The Collector shall, before passing an order under subsection (2), give a reasonable opportunity to the person concerned, of being heard;*

*(4) While making an order of confiscation under subsection (2), the District Collector may also order that such of the properties which the order of confiscation relates, which in his opinion cannot be preserved or are not fit for human consumption, be destroyed. Whenever any confiscated article has to be destroyed in conformity with these provisions, it shall be destroyed in the presence of an Executive Magistrate or officer ordering the confiscation or forfeiture, as the case may be, or in the presence of the Excise Officer not below the rank of a Sub Inspector;*

*(5) While making an order of confiscation under subsection (2), if the District Collector is of the opinion that it is expedient in the public interest to do so, he may order the said property or any part thereof to be sold by public auction or dispose of departmentally and proceeds deposited with the State Government;*

*(6) The District Collector shall submit a full report of all particulars of confiscation to the Commissioner of Excise*



*within one month of such confiscation".*

7. We would also like to refer to Rule 12B and 13B of the Bihar Prohibition and Excise (Amendment) Rules, 2022.

***"12B. Release of Premises on Payment of Penalty-(1) If any premises or part thereof has been seized or sealed by any police or excise officer under the Act, then in terms of section-57B (2) of the Act, the Collector or an officer authorized by him, upon receipt of an application in Form V from the owner of the said premises, may release or unseal the said premises or part thereof upon payment of such penalty as may be ordered by the Collector or the officer authorized by him.***

*Provided, where it is not possible to ascertain the owner of the premises or the owner is not coming forward, the Collector or the officer authorized by him shall, after waiting for 15 days from the date of seizure/sealing, proceed to confiscate the premises as per the provisions of the Act.*

*(2) The Collector or the officer authorized by him shall have due regard to the economic status of the individual, nature of his involvement in the crime, location of the premises and the quantum of intoxicant recovered while deciding the quantum of fine to be paid by the individual. However, the fine shall not be less than Rs. one Lakh in any case.*

*In any case, the Collector shall not wait beyond 15 days from the date of seizure/sealing and if during this period, the accused/owner does not pay up the penalty he shall proceed with the confiscation/ auction.*

*(3) Notwithstanding above, if on a report by police officer or excise officer, the Collector or the officer authorized by him is satisfied that releasing the premises shall not be in the public interest, the Collector or the officer authorized by him shall proceed ahead with the confiscation of the said premises or part thereof and its subsequent auction/disposal.*

*(4) Such penalty shall be, regardless of the outcome of the*



*trial if any, before the Special Court, non-refundable.*

*(5) The owner of the Premises shall, after the release of the premises, allow the inspection of the premises as and when desired by the authorities.*

**13B. Procedure of confiscation of Premises-** *(1) Where it is decided by the Collector that the premises is not to be released on penalty or where the owner does not pay the required penalty, the confiscation proceeding shall be initiated. The proposal for confiscation of the premises shall be sent by the police/excise officer to the Collector (or an officer authorized by him) within 30 days from the date of seizure/sealing. The officer concerned shall immediately start the confiscation proceeding.*

*In case of delay of beyond 30 days, in submission of the proposal for confiscation, the police/excise officer will have to explain the delay.*

*(2) The officer concerned, on receipt of proposal of confiscation of any premises or part thereof any property liable for confiscation from police/excise officer, shall issue show cause notice to the owner(s) of the premises or property. Simultaneously, he shall issue notice to the Chemical Examiner and/or such revenue officers for their reports.*

*(3) Such notice issued by the officer shall be served as per procedure prescribed in the Code of Criminal Procedure, 1973 for service of summons.*

*(4) The officer shall provide reasonable opportunity of hearing to the owner(s) of the premises or property. The investigating/inquiry officer shall also be given opportunity to participate in such hearing.*

*(5) If the person to whom notice has validly been served fails to appear in the proceeding on two consecutive dates fixed for hearing, the confiscating authority shall proceed to pass the order ex-parte.*

*(6) The officer shall, after hearing the parties, pass appropriate order of confiscation or unsealing, as the case may be, with respect to sealed/seized premises or property on the basis of his satisfaction whether an offence has been committed or not in terms of the Act.*



*(7) The officer shall ensure that the order for confiscation is passed within 90 days from the date of seizure/sealing of the premises.*

*(8) Any person aggrieved by the order passed by the Collector under the provisions of the Act may file appeal in the manner prescribed under these rules."*

8. A bare perusal of the aforesaid statutory provisions would show that a premises or part thereof used for committing an offence under the Act, 2016 can be seized/confiscated but the same can be released upon payment of penalty, however while deciding the quantum of fine to be paid by the individual, due regard has to be given to the economic status of the individual, nature of his involvement in the crime, location of the premises and the quantum of intoxicant recovered. Moreover, before passing an order of confiscation or unsealing, as the case may be, with respect to sealed/seized premises or property, the concerned officer has to be satisfied as to whether an offence has been committed or not in terms of the Act, 2016. Thus, it is apparent from the statutory provisions contained in the Act, 2016 and the Rules framed thereunder that direct involvement or connivance of the owner of the premises in question in illegal use of such premises for stacking illicit liquor is an essential prerequisite for seizure and confiscation of the premises in question or imposing any penalty for release of the same.

9. Now coming back to the present case, we find that



neither the petitioner has been made an accused in the aforesaid criminal case nor any recovery of illicit liquor has been made from his possession nor the respondents have produced any material in the counter affidavit to show either the involvement or connivance of the petitioner in the alleged occurrence. Moreover, there is no proof on record to show that either the petitioner was having any connection with the accused persons, namely Shrinath Kumar @ Shivnath Prasad and Himansu Kumar @ Tutu or he was instrumental in the alleged occurrence or he was having direct / indirect involvement or connivance in illegal use of the aforesaid premises for stacking illicit liquor. Therefore, we find that the action of the State authorities in sealing the premises in question and confiscating the room in question by the impugned order dt. 14.7.2025, passed by the Ld. Court of Sub-Divisional Magistrate, Rajgir is arbitrary and hit by Article 14 of the Constitution of India. It is also violative of the constitutional right of the petitioner to hold property as provided for under Article 300 A of the Constitution of India which prohibits any deprivation of the property save by authority of law. Thus, we are of the considered view that the Act, 2016, in no way authorizes the officials to seize the premises in question in the facts and circumstances of the



present case, hence the seizure and the confiscation of the room in question is without any authority of law.

10. Having regard to the facts and circumstances of the case and for the foregoing reasons, we set aside the order dated 14.07.2025, passed by the learned Court of Sub-Divisional Magistrate, Rajgir in Confiscation (Excise) Case No. 31 of 2024, whereby and whereunder the room in question has been confiscated. Consequently, we direct for de-sealing and release of the premises in question in favor of the petitioner upon the State authorities being satisfied about the ownership of the petitioner with regard to the premises in question within a period of two weeks of receipt / production of a copy of this order.

11. The writ petition stands allowed.

**(Mohit Kumar Shah, J)**

**(Arun Kumar Jha, J)**

Shahnawaz/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	30.04.2026
Transmission Date	N/A

