

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2919 of 2020

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Rakesh Sahni @ Rakesh Kumar Son of Ganesh Sahni, resident of village-
Pahetia, Police Station- Hajipur Sadar in the district of Vaishali

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Excise,
Government of Bihar, Patna
2. The Principal Secretary, Department of Excise, Government of Bihar, Patna
3. The District Magistrate-cum-Collector, Vaishali
4. The Superintendent of Police, Vaishali
5. The Officer-in-Charge, Sarai P.S. in the District of Vaishali

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sunil Kumar
For the Respondent/s : Mr.Vivek Prasad (Gp7)

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

(The proceedings of the Court are being conducted through Video
Conferencing and the Advocates joined the proceedings through
Video Conferencing from their residence.)

Date : 09-07-2020

Heard learned counsel for the petitioner and learned
counsel for the State.

Petitioner has prayed for following relief:-

- I. “To direct the respondents to release the
i20 car of the petitioner bearing Reg.
No.BR31AJ-5018 in favour of the
petitioner which has been seized in
connection with Sarai P.S. Case No.33 of
2019 registered for the offence



punishable under Section 30(a) of Bihar Prohibition and Excise Act, 2016.

- II. Also for any other relief/reliefs for which the petitioner is found to be entitled in the eye of law.”

Informant who is a police officer has alleged in his complaint that on receiving confidential information that FIR named accused are indulged in sale of illicit foreign liquor, he raided the place and from the hut, illicit liquor was recovered, however, no miscreants could be arrested and they managed to flee away and thereafter illicit liquor recovered was seized for which FIR was registered giving rise to Sarai P.S. Case No.33 of 2019 under Section 30(a) of Bihar Prohibition and Excise Act, 2016.

It is submitted that raid was conducted on 6.2.2019 in which it is apparent from the FIR and seizure list that only illicit liquor was recovered. However, recovery of vehicle has been shown on 1.3.2019 from Vaishnavi Enterprises, Lalganj, Vaishali.

It is submitted on behalf of petitioner that no illicit liquor has been recovered from the seized vehicle which is apparent from the FIR as well as seizure memo as such seized vehicle is not liable for confiscation under Section 56 of the Excise Act and bar of jurisdiction in confiscation as



contemplated under Section 60 of the Act is not applicable and the Special Court, Excise where the excise case is pending has jurisdiction to pass order of provisional release of the vehicle.

In view of law laid down by Division Bench of this Court in case of Diwakar Kumar Singh vs. State of Bihar since reported in 2018 (3) PLJR 403 and following said judgment as well as other judgments passed by this Court, the Excise Commissioner, Bihar Patna in appeal arising out of Confiscation Case No. 107 of 2019 (Ajit Roy Vs. Collector, Sheohar) has held that transportation of prohibited article under the Act is a sine qua non for a vehicle to be confiscated. The relevant paragraph of order passed in Appeal by Excise Commissioner is quoted below:-

“From the aforesaid judgment and order passed by the Hon’ble High Court of Patna it is well established that the transportation of prohibited article under the Act, 2016, is a sine qua non for a vehicle to be confiscated on the passing of an order by the District Collector. Therefore the confiscation order passed by the learned Collector, Sheohar in confiscation Case No. 107/2019 on 09.12.2019 is hereby ordered to be modified to the extent that the three motorcycles bearing registration No. BR-06BJ 6591; BR-06BL 5384 and BR-55 4036 will be released after verifying the document related to registration and owner of the said vehicle.”

It is submitted that no confiscation proceeding has



been initiated by the District Collector against the said vehicle, however, if any, confiscation proceeding has been initiated, same is directed to be dropped.

Accordingly, petitioner is directed to file an application before the concerned Special Court (Excise) under Section 451 of Cr.P.C. for interim release of the vehicle which has been seized by the police in the case as same are not liable for confiscation and as such it is the Special Court (Excise), which can pass an order for interim release of the vehicle, with terms and conditions of release as usually imposed. If any such application is filed by the petitioner same to be disposed of within 30 days from the filing of said application.

With the aforesaid observation and direction, this writ petition is disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.07.2020
Transmission Date	NA

