

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2803 of 2020

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Digvijay Yadav Son of late Kailashnath Yadav, Resident of Village-
Maudharam, P.S. Khajni, District- Gorakhpur, U.P.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The District Magistrate, West Champaran, Bettiah.
3. The Superintendent of Excise Department, West Champaran, Bettiah.
4. The Officer in Charge, Railway, P.S. Narkatiyaganj Police Station, West Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Bimlesh Kumar Pandey
For the Respondent/s : Mr.Vikash Prasad (Gp7)

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 08-07-2020

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

Petitioner has prayed for the following relief:-

“(a) For issuance of appropriate writ commanding the respondent authorities to release the money, Rs. 1,37,300/- and Passport bearing number “24444109” of the petitioner, which have been seized by the respondent railway police officials of Railway PS Narkatiyaganj in PS Case No. 94 of 2019, registered for the offences U/S 30(a) of Bihar Prohibition & Excise Act, in favour of the petitioner and handling it over to the petitioner or to his representative. The case is pending in the court of learned Special Judge Excise, Bettiah, West Champaran. That the aforesaid articles seized by the police have been kept in the police station having no fruitful purpose.”

Informant is Officer-in-Charge of Rail PS

Narkatiaganj, who has alleged in FIR that while he was on duty



and keeping vigil on platform, in the meanwhile, Poorvanchal Express reached platform no. 4 and on search of two persons who were travelling on said train foreign liquor was recovered from bag of accused Digvijay Yadav (petitioner), and thereafter Rs. 1,37,300/- and a passport was also recovered from his possession which were seized, for which Narkatiaganj Rail PS Case No. 94 of 2019 dated 21.11.2019, was registered under section 30(a) of Bihar Prohibition & Excise Act, 2016 and illicit liquor, cash and passport was seized.

A Division Bench of this Court in CWJC No. 19300 of Patna High Court CWJC No.13568 of 2019 dt.25-06-2020 2/4 2018 (Chhedi Mahto Vs. the State of Bihar & Ors) has held that cash seized under Excise Act is not liable for confiscation. The relevant paragraph of the judgment and order is quoted hereinbelow:-

“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 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'.”

Cash and passport are not liable for confiscation and bar of jurisdiction in confiscation under Section 60 of the Bihar



Prohibition & Excise Act, 2016 is not applicable as such concerned Special Court (Excise) has jurisdiction under Section 451 of Cr.P.C for relase of cash and passport.

Accordingly, petitioner is directed to file an application before the Special Court (Excise), Rohtas at Sasaram under Section 451 of Cr.P.C for release of the cash and passport 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 release of the cash and passport, 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)

ranjan/-

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

