

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6443 of 2020

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1. Deepak Kumar S/o Ramsurat R/o Village- Bankata, P.S.- Shikariganj, District- Gorakhpur (U.P.).
 2. Akhilesh Madheshiya
 3. Abhishek Madheshiya Both Sons of Ghanshyam Madheshiya, R/o Village- Bhavapar, P.S.- Belipar, 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. Superintendent of Railway Police, Mujaffarpur.
5. The Officer in Charge, Railway P.S. Narkatiyaganj Police Station, West Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Bimlesh Kumar Pandey
For the Respondent/s : Mr.Vikash Kumar (Sc11)

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 : 05-11-2020

Heard the parties.

Petitioner has prayed for following reliefs:-

“(a) For issuance of appropriate writ commanding the respondent authorities to release the following articles in favour of petitioner No.1 or to his legal representative, (I) Rs.850000 with some clothes, airbag containing clothes and 5 pieces of H.P. laptop, one MI mobile bearing EMEI No.86804303222, purse containing ID Card, Pan card, Foreign currency of 1330



seized from the petitioner No.1, namely, Deepak Kumar.

(b) For issuance of appropriate writ commanding the respondent authorities to release the following articles in favour of petitioner no.2 or to his legal representative (ii) Rs.750000, one passport, two old mobiles one Samsung and other one is Realme, Trolley bag, Airbag and purse containing Adhar Card, Pan Card and other documents from the petitioner no.2 namely Akhilesh Madheshiya.

(c) For issuance of appropriate writ commanding the respondent authorities to release the following articles in favour of petitioner No.3 or to his legal representative (iii) One smart card, 11000 rupees Indian Currency, total 1720 Thai currency (Bhat), 100 American Dollar, Adhar Card, one vivo company mobile from petitioner No.3 namely Abhishek Madheshiya, which have been seized by the respondent railway police officials of Railway P.S. Narkatiyaganj in P.S. Case No.33/2019, registered for the offences u/s 30(a) of Bihar Prohibition and Excise Act. 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.

(d) For the issuance of any other relief/reliefs to which the petitioners may be found entitled, in the present facts and circumstances of the case in favour of the petitioners.”

Informant is a police officer who has alleged in his written complaint that on account of ensuing Lok Sabha



Election, he was posted at Railway Station, Narkatiyaganj to keep a vigil on anti-social elements and miscreants involved in illicit liquor business and while checking in Gorakhpur - Kolkatta Express train, he found two passengers who disclosed their name as Deepak Kumar and Akhilesh Madheshiya and from their possession, illicit liquor, cash, foreign currency, passport, mobile and property documents and other documents were recovered which were seized in presence of two independent witnesses and illicit liquor, cash, mobile, passport and other documents were seized and seizure list were prepared giving rise to Narkatiyaganj P.S. Case No.33/2019, registered for the offences u/s 30(a) of Bihar Prohibition and Excise Act.

It is submitted on behalf of petitioners that they are innocent and have falsely been implicated in this case. They are businessmen and were carrying cash to purchase property in Kolkatta and were having valid railway ticket, still were arrested on pretext of having no railway tickets and subsequently roped in this false case. Petitioner no.3 is not named in FIR still recovery has been shown from his possession and has been made accused due to police high-handedness.

As recovered cash, mobiles, laptops, passports, identity cards, pan cards, wallet, smart card, Adhar Card, foreign



currency and other seized articles as shown in seizure list are not liable for confiscation under section 56 of the Excise Act, as such, bar of jurisdiction in confiscation under section 60 of the Excise is not applicable and the Special Court, Excise has jurisdiction to pass order for release of such seized articles as shown in seizure list during pendency of trial with terms and conditions as usually imposed.

The writ petition is disposed of with liberty to petitioners to file a petition before the Special Court, Excise under section 451 of Cr.P.C. and if any such petition is filed for release of seized articles as per seizure list, the Special Court, Excise shall dispose of such petition within 30 days from its filing.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.11.2020
Transmission Date	NA

