

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.6236 of 2020**

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Balmiki Kumar Mahto @ Bali Kumar Mahto S/o - Amarnath Mahto, R/o -  
Basant Tole Latraha, P.O.- Jale, P.S.- Jale Anchal, Distt. - Darbhanga- 847302.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Bihar Prohibition and Excise Act, Patna.
2. The Collector - Cum - District Magistrate, Darbhanga.
3. The Superintendent of Police, Darbhanga.
4. The Station House Officer, Jalley P.S., Darbhanga.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr.Prashant Kumar  
For the Respondent/s : Mr.Lalit Kishore (Ag)

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**CORAM: HONOURABLE THE CHIEF JUSTICE**  
**and**  
**HONOURABLE MR. JUSTICE S. KUMAR**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE S. KUMAR)**

**Date : 25-06-2020**

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

Petitioner has prayed for the following relief:-

“For issuance of direction to the respondent  
authorities to release the cash recovered and  
seized/confiscated from the petitioner in connection with  
Jalley PS Case No. 108/18 for the offence registered under  
Sections 188, 290, 406, 420 and 34 of the Indian Penal Code,  
1860 and 30(a), 38, 41 and 44 of Bihar Prohibition and Excise  
Act, 2016 in favour of petitioner.”



FIR was instituted under sections 188, 290, 406, 420 and 34 of the Indian Penal Code, and section 30(a), 38, 41 and 44 of Bihar Prohibition and Excise Act, 2016, giving rise to Jaley PS Case No. 108 of 2018 against the petitioner and Rs. 41,200/-was recovered and seized from the petitioner.

It is submitted by learned counsel for the petitioner that no illicit liquor was recovered from the possession of petitioner and cash recovered and seized is not liable for confiscation under Section 58 of the Bihar Prohibition and Excise Act, 2016, as held by a Division Bench of this Court in **CWJC No. 3005 of 2019 (Anant Kumar Mishra Vs. State of Bihar).**

Petitioner had filed an application for release of cash which was rejected by the Special Judge, Excise Act, Darbhanga, vide order dated 23.01.2019 passed in G.O. No. 636 of 2018 on the ground that from the report of concerned police station letter for confiscation has been written to District Magistrate, Darbhanga. Section 60 of the Excise Act bars the jurisdiction of the court.

As Division Bench of this Court has held that cash



recovered is not liable for confiscation under section 58 of the Bihar Prohibition and Excise Act, 2016, as such bar of Section 60 of the aforesaid Act will not operate for release of articles which are not subject matter of confiscation.

Accordingly, the order dated 23.01.2019 passed by 5<sup>th</sup> Additional Sessions Judge cum Special Judge, Darbhanga in G.O. No. 636 of 2018 is set aside and learned Special Court, Excise, Darbhanga, is directed to pass a fresh order on the application of petitioner filed under Section 451 of Cr.P.C for release of his cash within 30 days from the date of receipt/production of a copy of the order passed by this Court.

The District Magistrate, Darbhanga, is also directed to drop the confiscation proceeding, if any, initiated for confiscating the cash amount recovered from the petitioner arising out of Jaley P.S. Case No. 108 of 2018 registered for the offence punishable under sections 188, 290, 406, 420 and 34 of the Indian Penal Code, and Section 30(a), 38, 41 and 44 of Bihar Prohibition and Excise Act, 2016, as cash recovered is not liable for confiscation under Section 58 of the Bihar Prohibition and Excise Act, 2016.



Subject to the aforesaid observation and direction,  
this application is disposed of.

**(Sanjay Karol, CJ)**

**(S. Kumar, J)**

ranjan/-

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