

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9802 of 2019

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Brij Mala Devi, W/o Tapesht Kumar Tiwari, Resident of Village-Hariharpur
Kothi,P.S. Janta Bazar,Dist.-Saran

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Department of Prohibition of Excise and Registration, Govt. of Bihar, Patna
2. The Commissioner, Department of Excise Govt. of Bihar, Patna
3. The District Magistrate, Saran
4. The Superintendent of Police, Saran
5. The Station House Officer, Manjhi Police Station, Dist.-Saran
6. The Zonal Manager Punjab National Bank, Patna
7. The Branch Manager Punjab National Bank, Branch Janta Bazar, Dist.-Saran
8. Superintendent of Police, Economic Offence Unit, Bihar, Sri Krishna Singh Path, Patna

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anirudh Kumar Sinha, Adv.
For the Respondent/s : Mr. Vikash Kumar (SC 11)

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

Date : 22-06-2020

This matter was mentioned to be covered vide item
No. IX of Notice-II dated 30th May, 2020 published in the Daily
Cause List.

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

Petitioner has prayed for the following reliefs: -



“(i) For issuance of an appropriate writ(s), order(s), direction(s) for release/reoperative of the Bank accounts of the petitioner Punjab National Bank, Janta Bazar Branch, District- Saran A/c No.2243000100718202, A/c No.2243000100812827 which is belongs to the petitioner, which have been seized/withheld by the branch after March, 2018 in connection with Manjhi P.S. Case No. 302/17 dated 27.12.2017 and also pass consequential order. ”

Learned counsel for the petitioner prays that the petition be disposed of in terms of order dated 9th January, 2020 passed in CWJC No. 20598 of 2019 titled as Md. Shaukat Ali Vs. The State of Bihar and subsequent order dated 14th January, 2020 passed in CWJC No.17165 of 2019 titled as Umesh Sah Versus the State of Bihar & Ors. and order dated 29.01.2020 passed in CWJC No.2050 of 2020 titled as Bunilal Sah @ Munilal Sah.

Shri Vikash Kumar, learned Standing Counsel for the respondents has no objection to the same.

(In C.W.J.C. No.20598 of 2019, order dated 9.1.2020)

“The petition filed on 01.10.2019 is listed for hearing for the first time today before the Court.

Heard learned counsel for the petitioner and learned counsel appearing on behalf of the State.

With the consent of the learned counsel for the parties, the writ petition stands disposed of in the



following terms.

The petitioner prays for provisional release of Tata Indigo white vehicle bearing Registration No. BR 01CX 1796 which has been seized in connection with Kotwali P. S. Case No. 721 of 2019, for the offences punishable under Sections 427/279 of the Indian Penal Code and Section 37(b)(c) of the Bihar Prohibition and Excise Act, 2016.

It is continued practice of this Court that in cases of drunken driving; no recovery from the vehicle; recovery of less than commercial quantity; where ex-facie, vehicle is not liable to be confiscated; where there is inordinate delay in initiating proceedings for confiscation of the vehicle etc., this Court has been directing the State to provisionally release vehicle/property, subject to initiation/conclusion/finalisation of the confiscatory proceedings, as the case may be. Reference can be made to the judgments/ orders passed by different co-ordinate Benches of this Court, viz:-

(i) Judgement dated 22.03.2018 passed in CWJC No.5049 of 2018, titled as Diwakar Kumar Singh versus The State of Bihar & Ors.;

(ii) order dated 31.07.2018 passed in CWJC No.13162 of 2018 titled as Rajesh Kumar Pandit @ Rajesh Pandit Vs. The State of Bihar & Ors.;

(iii) order dated 31.07.2018 passed in CWJC No.14242 of 2018 titled as Amar Kumar Vs. The State of Bihar & Ors.;

(iv) order dated 12.02.2018 passed in



CWJC No.2437 of 2018 titled as Mahendra Manjhi Vs. The State of Bihar & Ors.;

(v) judgement dated 12.02.2018 passed in CWJC No.2470 of 2018 titled as Laxman Das @ Lakshman Ravidas Vs. The State of Bihar & Ors.;

(vi) order dated 11.09.2017 passed in CWJC No.13158 of 2017 titled as Sanjay Kumar Versus The State of Bihar & Ors.;

(vii) order dated 27.03.2018 passed in CWJC No.5528 of 2018 titled as Bikash Kumar Vs. The State of Bihar & Ors.;

(viii) order dated 27.03.2018 passed in CWJC No.5528 of 2018 titled as Bikash Kumar Versus The State of Bihar & Ors.;

(ix) order dated 01.05.2018 passed in CWJC No.7755 of 2018 titled as Anandi Prasad Versus The State of Bihar & Ors.;

(x) order dated 01.05.2018 passed in CWJC No.7644 of 2018 titled as Suraj Ram Versus The State of Bihar & Ors.;

(xi) order dated 07.08.2018 passed in CWJC No.15435 of 2018 titled as Kalesar Chaudhari Versus the State of Bihar & Ors.;

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(xiv) judgement dated 08.02.2019 passed in CWJC No.2380 of 2019 titled as Avinash Kumar Versus the State of Bihar & Ors.;

(xv) judgement dated 29.01.2019 passed in CWJC No.1648 of 2019 titled as Roshan Kumar Versus The State of Bihar & Ors.; and

(xvi) judgement dated 22.01.2019 passed in CWJC No.1314 of 2019 titled as Shanti Devi Versus The State of Bihar & Ors.

In fact, in CWJC No. 5049 of 2018 titled as **Diwakar Kumar Singh Versus the State of Bihar & Ors.** the Court issued the following directions:-

“That apart, in the confiscation proceedings, the confiscating authority shall take note of the provisions of Section 56 of the Bihar Prohibition and Excise Act, 2016 and record a positive finding after hearing the petitioner as to whether when the petitioner is found or the vehicle is found to be used by a person in drunken condition and no liquor is seized from the vehicle or when the vehicle is not used for transportation of liquor, whether the provision of Section 56 of the Act will apply. It shall be mandatory for the confiscating authority to decide this issue before passing any order on the confiscation proceedings. The confiscating authority shall consider the provision of Section 56 of the Act, apply his mind and pass a speaking order with regard to confiscation initiated. Without deciding the aforesaid issue as a preliminary issue, further proceedings in the



confiscation proceedings shall be prohibited.

We further request the office of the Advocate General to communicate this order to all the District Magistrates in the State of Bihar, who would be mandated to pass an appropriate order in such cases where the vehicle has been confiscated under Section 56 of the Act only on the allegation that the vehicle was being driven in a drunken condition and no liquor was seized from the vehicle nor the vehicle used for transportation or carriage of liquor. The issue shall be decided by each and every District Magistrate before proceeding in the confiscation proceedings where the allegation is about the vehicle being driven in a drunken condition and no liquor was found from the possession of the vehicle.

It shall be the duty of the Advocate General to communicate this order to each and every District Magistrate and inform the Registrar General of this Court. In spite thereof, if we find that the District Magistrates are passing confiscation order without addressing this issue first, we may consider initiating contempt proceedings against the concerned District Magistrate.”

It is further seen that in CWJC No.15003 of 2019 titled as **Shobha Devi Versus The State of Bihar & Ors.** the Court observed as under:-

“6. On examination of aforesaid fact, particularly allegation of the petitioner that in a court proceeding before the learned Special Judge, Excise, a false information was given, we are of the opinion



that the court of learned Special Judge, Excise would be competent court to pass an appropriate order, in view of provisions contained in Section 340 of the Code of Criminal Procedure, 1973.

7. Accordingly, the petitioner is granted liberty to file appropriate petition before the learned Special Judge, Excise for prosecuting the concerned police official.

8. So far as claim of compensation is concerned, obviously on going through the material on record, since there was no recovery of liquor from the vehicle and it was a case, in which, the occupants of the vehicle were alleged to be in drunken condition and were creating nuisance, though were liable to be arrested. In any event, the vehicle was not required to be seized, since it was not liable to be confiscated.

9. In such situation, we are of the opinion that it is a fit case, in which, we may direct to pay adequate compensation to the petitioner, being owner of the vehicle, to the tune of Rs.75,000/- (seventy five thousand), however, Sri Kumar Manish, learned Standing Counsel – 5 requests for granting an opportunity for obtaining detailed instruction and filing counter affidavit in the matter. The request of Sri Kumar Manish, S.C.-5 is allowed for filing counter affidavit so that final order may be passed.

10. It goes without saying that before filing counter affidavit, the respondent no. 4/Superintendent of Police, Darbhanga may conduct a preliminary inquiry regarding the conduct of the



police officer, who had seized the vehicle of the petitioner and state all those facts in its counter affidavit, which must be filed by 29th of November, 2019. The affidavit must be sworn by the Superintendent of Police himself.

11. It further goes without saying that if after considering all the facts, including counter affidavit, which is proposed to be filed, the Court comes to the conclusion that the petitioner is entitled for claim of amount of compensation, which has been referred hereinabove, the said compensation amount must be recovered from the pocket of the police officer, who was responsible for such illegal seizure.”

Despite the same, only before this Court, when matters of similar nature came up for hearing on 16th of December, 2019, the learned Advocate General assisted by Shri Vikash Kumar, learned Standing Counsel-11, and Shri Vivek Prasad, learned Government Pleader-7, vehemently opposed the petitions for release of the vehicles. Consequently, the writ petitions were disposed of with the directions to the appropriate authorities to positively initiate/conclude confiscatory proceedings within a period of 30-45 days.

Without adjudicating the petitioner’s petition on merits, we are of the considered view that interest of justice would be best met, if the petition is disposed of in the following terms:-

(a) Since the vehicle in question stands seized in relation to the FIR which stood registered long ago, in case confiscation proceeding has not been



initiated, it must be initiated within a period of 15 days from today and that confiscation proceeding stands initiated, we direct the appropriate authority under the Act to forthwith ensure that such proceedings be concluded not later than 30 days.

(b) The petitioner undertakes to make himself available in the office of the concerned appropriate authority empowered under Section 58 of the Act i.e. District Collector, in his/her office on 24.01.2020 at 10:30 A.M.

(c) We further direct the appropriate authority to positively conclude the confiscation proceeding within next thirty days on appearance of the petitioner. If for whatever reason, such proceeding cannot be concluded, in that event it shall be open for the authority to take such measures, as are permissible in law, for release of the vehicle in question by way of interim measure, on such terms as may be deemed appropriate, considering the attending facts and circumstances of the case.

(d) If eventually, the appropriate authority arrives at a conclusion that the property is not liable to be confiscated, it shall be open for the petitioner to seek damages in accordance with law and have appropriate proceedings initiated against the erring officials/officers.

Learned counsel for the petitioner states that the certified copy of the order shall be made available to the concerned District Collector on the date so fixed.

For future guidance, where parties have not approached this Court, we issue the following direction:-

The expression “reasonable delay” used in



Section 58 of Chapter VI of the Act, in our considered view, necessarily has to be within a reasonable time and with dispatch, which period, in our considered view, three months time is sufficient enough for any authority to adjudicate any issue, more so, when we are dealing with confiscatory proceedings.

We clarify that we have not adjudicated the writ petition on merits and it shall be open for the parties to take all stand in the adjudicatory proceedings and wherever parties are aggrieved, it shall be open to them to initiate appropriate proceeding before the appellate authority.

Learned counsel for the State also undertakes to communicate the order to the concerned appropriate authority i.e. District Magistrate, empowered under Section 58 of the Act.”

(In C.W.J.C. No.17165 of 2019, order dated 14.1.2020)

“Heard learned counsel for the petitioner and learned counsel appearing on behalf of the State.

Learned counsel for the petitioner invites our attention to our earlier order dated 09.01.2020 passed in CWJC No. 20598 of 2019, titled as Md. Shaukat Ali Vs. The State of Bihar & Ors., and wants the petition to be disposed of in terms thereof.

With the consent of the learned counsel for the parties, the writ petition stands disposed of in the following terms.

The petitioner prays for provisional release of Pick Up Van (Tata Motor/SFC-407 D-Van) bearing Registration No. BR-06G-4211 which has been seized in connection with Taukauliya P.S.Case No. 709 of 2018 for



the offences punishable under Sections 272, 273, 34 of the Indian Penal Code and Sections 30(a), 38(1), 41(1) of the Bihar Prohibition and Excise Act, 2016.

It is continued practice of this Court that in cases of drunken driving; no recovery from the vehicle; recovery of less than commercial quantity; where ex-facie, vehicle is not liable to be confiscated; where there is inordinate delay in initiating proceedings for confiscation of the vehicle etc., this Court has been directing the State to provisionally release vehicle/property, subject to initiation/conclusion/finalisation of the confiscatory proceedings, as the case may be. Reference can be made to the judgments/ orders passed by different co-ordinate Benches of this Court, viz:-

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“6. On examination of aforesaid fact, particularly allegation of the petitioner that in a court proceeding before the learned Special Judge, Excise, a false information was given, we are of the opinion that the court of learned Special Judge, Excise would be competent court to pass an appropriate order, in view of provisions contained in Section 340 of the Code of Criminal Procedure, 1973.

7. Accordingly, the petitioner is granted liberty to file appropriate petition before the learned Special Judge, Excise for prosecuting the concerned police official.

8. So far as claim of compensation is concerned, obviously on going through the material on record, since there was no recovery of liquor from the vehicle and it was a case, in which, the occupants of the vehicle were alleged to be in drunken condition and were creating nuisance, though were liable to be



arrested. In any event, the vehicle was not required to be seized, since it was not liable to be confiscated.

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10. It goes without saying that before filing counter affidavit, the respondent no. 4/Superintendent of Police, Darbhanga may conduct a preliminary inquiry regarding the conduct of the police officer, who had seized the vehicle of the petitioner and state all those facts in its counter affidavit, which must be filed by 29th of November, 2019. The affidavit must be sworn by the Superintendent of Police himself.

11. It further goes without saying that if after considering all the facts, including counter affidavit, which is proposed to be filed, the Court comes to the conclusion that the petitioner is entitled for claim of amount of compensation, which has been referred hereinabove, the said compensation amount must be recovered from the pocket of the police officer, who was responsible for such illegal seizure.”

Despite the same, only before this Court, when matters of similar nature came up for hearing on 16th of December, 2019, the learned Advocate General assisted by



Shri Vikash Kumar, learned Standing Counsel-11, and Shri Vivek Prasad, learned Government Pleader-7, vehemently opposed the petitions for release of the vehicles. Consequently, the writ petitions were disposed of with the directions to the appropriate authorities to positively initiate/conclude confiscatory proceedings within a period of 30-45 days.

Without adjudicating the petitioner's petition on merits, we are of the considered view that interest of justice would be best met, if the petition is disposed of in the following terms:-

(a) Since the vehicle in question stands seized in relation to the FIR which stood registered long ago, in case confiscation proceeding has not been initiated, it must be initiated within a period of 15 days from today and that confiscation proceeding stands initiated, we direct the appropriate authority under the Act to forthwith ensure that such proceedings be concluded not later than 30 days.

(b) The petitioner undertakes to make himself available in the office of the concerned appropriate authority empowered under Section 58 of the Act i.e. District Collector, in his/her office on 24.01.2020 at 10:30 A.M.

(c) We further direct the appropriate authority to positively conclude the confiscation proceeding within next thirty days on appearance of the petitioner. If for whatever reason, such proceeding cannot be concluded, in that event it shall be open for the authority to take such measures, as are permissible in law, for release of the vehicle in question by way of interim measure, on such terms as may be deemed



appropriate, considering the attending facts and circumstances of the case.

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Learned counsel for the petitioner states that the certified copy of the order shall be made available to the concerned District Collector on the date so fixed.

For future guidance, where parties have not approached this Court, we issue the following direction:-

The expression “reasonable delay” used in Section 58 of Chapter VI of the Act, in our considered view, necessarily has to be within a reasonable time and with dispatch, which period, in our considered view, three months time is sufficient enough for any authority to adjudicate any issue, more so, when we are dealing with confiscatory proceedings.

We clarify that we have not adjudicated the writ petition on merits and it shall be open for the parties to take all stand in the adjudicatory proceedings and wherever parties are aggrieved, it shall be open to them to initiate appropriate proceeding before the appellate authority.

Learned counsel for the State also undertakes to communicate the order to the concerned appropriate authority i.e. District Magistrate, empowered under Section 58 of the Act.”

(Order dated 29.01.2020 passed in CWJC No.2050 of 2020)

It is seen that despite our order dated 9th of



January, 2020, passed in C.W.J.C. No. 20598 of 2019, titled as Md. Shaukat Ali Vs. The State of Bihar & Ors., and the order dated 14th of January, 2020 passed in C.W.J.C. No. 17165 of 2019, titled as Umesh Sah Vs. The State of Bihar & Ors., the State has not initiated proceedings under the provisions of the Bihar Prohibition and Excise Act, 2016. It is a matter of record that this legislation has generated huge litigation. The docket of the Court, be it the trial court or the High Court, is now choked solely on account of such legislation. In the High Court itself, on an average, 400 bail applications are being filed every day, some of which are pertaining to the said Statute. Position in the lower courts is worse. Before the trial courts, i.e. the Sessions Courts, more than 1,75,000 challans stand filed in relation to the said Statute. Before this Court, on an average, more than 5000 writ petitions are being filed annually for release of vehicles/properties seized under the said Act. It has been the continued practice of this Court, since the year 2017, that in the writ petitions the vehicles, unless the situation so warrants, are normally being released subject to fulfilment of certain conditions. This, perhaps, is done only to protect the property from being destroyed, for there is no mechanism under the Statute or with the administration for protecting the property seized in relation to the crime registered under the said Statute. Property is left to the vagaries of weather, resulting into national loss. This we say for the reason that proceedings for confiscation, as envisaged under Section 58, were never initiated by the authority, which under the Act is the District Magistrate/Collector. It is only as a result of inaction on the part of such authorities that the owners of the vehicles/properties are constrained to approach this



Court for its release. When the matter in C.W.J.C. No. 20598 of 2019 (Md. Shaukat Ali Vs. The State of Bihar& Ors.) and in 17165 of 2019(Umesh Sah Vs. The State of Bihar& Ors.) (supra) was taken up for hearing, the State vehemently opposed the release of the vehicle and, as such, the following orders were passed:

(in C.W.J.C. No.20598 of 2019, order dated 9.1.2020)

“The petition filed on 01.10.2019 is listed for hearing for the first time today before the Court.

Heard learned counsel for the petitioner and learned counsel appearing on behalf of the State.

With the consent of the learned counsel for the parties, the writ petition stands disposed of in the following terms.

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It is continued practice of this Court that in cases of drunken driving; no recovery from the vehicle; recovery of less than commercial quantity; where ex-facie, vehicle is not liable to be confiscated; where there is inordinate delay in initiating proceedings for confiscation of the vehicle etc., this Court has been directing the State to provisionally release vehicle/property, subject to initiation/conclusion/finalisation of the confiscatory proceedings, as the case may be. Reference can be made to the judgments/ orders passed by different co-ordinate Benches of this Court, viz:-



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Court issued the following directions:-

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the confiscating authority shall take note of the
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Excise Act, 2016 and record a positive finding after
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We further request the office of the Advocate General to communicate this order to all the District Magistrates in the State of Bihar, who would be mandated to pass an appropriate order in such cases where the vehicle has been confiscated under Section 56 of the Act only on the allegation that the vehicle was being driven in a drunken condition and no liquor was seized from the vehicle nor the vehicle used for transportation or carriage of liquor. The issue shall be decided by each and every District Magistrate before proceeding in the confiscation proceedings where the allegation is about the vehicle being driven in a drunken condition and no liquor was found from the possession of the vehicle.

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“6. On examination of aforesaid fact, particularly allegation of the petitioner that in a court proceeding before the learned Special Judge, Excise, a false information was given, we are of the opinion that the court of learned Special Judge, Excise would be competent court to pass an appropriate order, in view of provisions contained in Section 340 of the Code of Criminal Procedure, 1973.

7. Accordingly, the petitioner is granted liberty to file appropriate petition before the learned Special Judge, Excise for prosecuting the concerned police official.

8. So far as claim of compensation is concerned, obviously on going through the material on record, since there was no recovery of liquor from the vehicle and it was a case, in which, the occupants of the vehicle were alleged to be in drunken condition and were creating nuisance, though were liable to be arrested. In any event, the vehicle was not required to be seized, since it was not liable to be confiscated.

9. In such situation, we are of the opinion that it is a fit case, in which, we may direct to pay adequate compensation to the petitioner, being owner of the vehicle, to the tune of Rs.75,000/- (seventy five thousand), however, Sri Kumar Manish, learned Standing Counsel – 5 requests for granting an opportunity for obtaining detailed instruction and filing counter affidavit in the matter. The request of Sri Kumar Manish, S.C.-5 is allowed for filing counter affidavit so



that final order may be passed.

10. It goes without saying that before filing counter affidavit, the respondent no. 4/Superintendent of Police, Darbhanga may conduct a preliminary inquiry regarding the conduct of the police officer, who had seized the vehicle of the petitioner and state all those facts in its counter affidavit, which must be filed by 29th of November, 2019. The affidavit must be sworn by the Superintendent of Police himself.

11. It further goes without saying that if after considering all the facts, including counter affidavit, which is proposed to be filed, the Court comes to the conclusion that the petitioner is entitled for claim of amount of compensation, which has been referred hereinabove, the said compensation amount must be recovered from the pocket of the police officer, who was responsible for such illegal seizure.”

Despite the same, only before this Court, when matters of similar nature came up for hearing on 16th of December, 2019, the learned Advocate General assisted by Shri Vikash Kumar, learned Standing Counsel-11, and Shri Vivek Prasad, learned Government Pleader-7, vehemently opposed the petitions for release of the vehicles. Consequently, the writ petitions were disposed of with the directions to the appropriate authorities to positively initiate/conclude confiscatory proceedings within a period of 30-45 days.

Without adjudicating the petitioner’s petition on merits, we are of the considered view that interest of justice would be best met, if the petition is disposed of in the following terms:-



(a) Since the vehicle in question stands seized in relation to the FIR which stood registered long ago, in case confiscation proceeding has not been initiated, it must be initiated within a period of 15 days from today and that confiscation proceeding stands initiated, we direct the appropriate authority under the Act to forthwith ensure that such proceedings be concluded not later than 30 days.

(b) The petitioner undertakes to make himself available in the office of the concerned appropriate authority empowered under Section 58 of the Act i.e. District Collector, in his/her office on 24.01.2020 at 10:30 A.M.

(c) We further direct the appropriate authority to positively conclude the confiscation proceeding within next thirty days on appearance of the petitioner. If for whatever reason, such proceeding cannot be concluded, in that event it shall be open for the authority to take such measures, as are permissible in law, for release of the vehicle in question by way of interim measure, on such terms as may be deemed appropriate, considering the attending facts and circumstances of the case.

(d) If eventually, the appropriate authority arrives at a conclusion that the property is not liable to be confiscated, it shall be open for the petitioner to seek damages in accordance with law and have appropriate proceedings initiated against the erring officials/officers.

Learned counsel for the petitioner states that the certified copy of the order shall be made available to the concerned District Collector on the date so fixed.



For future guidance, where parties have not approached this Court, we issue the following direction:-

The expression “reasonable delay” used in Section 58 of Chapter VI of the Act, in our considered view, necessarily has to be within a reasonable time and with dispatch, which period, in our considered view, three months time is sufficient enough for any authority to adjudicate any issue, more so, when we are dealing with confiscatory proceedings.

We clarify that we have not adjudicated the writ petition on merits and it shall be open for the parties to take all stand in the adjudicatory proceedings and wherever parties are aggrieved, it shall be open to them to initiate appropriate proceeding before the appellate authority.

Learned counsel for the State also undertakes to communicate the order to the concerned appropriate authority i.e. District Magistrate, empowered under Section 58 of the Act.”

(in C.W.J.C. No.20598 of 2019, order dated 9.1.2020)

“The petition filed on 01.10.2019 is listed for hearing for the first time today before the Court.

Heard learned counsel for the petitioner and learned counsel appearing on behalf of the State.

With the consent of the learned counsel for the parties, the writ petition stands disposed of in the following terms.

The petitioner prays for provisional release of Tata Indigo white vehicle bearing Registration No. BR 01CX 1796 which has been seized in connection with



Kotwali P. S. Case No. 721 of 2019, for the offences punishable under Sections 427/279 of the Indian Penal Code and Section 37(b)(c) of the Bihar Prohibition and Excise Act, 2016.

It is continued practice of this Court that in cases of drunken driving; no recovery from the vehicle; recovery of less than commercial quantity; where ex-facie, vehicle is not liable to be confiscated; where there is inordinate delay in initiating proceedings for confiscation of the vehicle etc., this Court has been directing the State to provisionally release vehicle/property, subject to initiation/conclusion/finalisation of the confiscatory proceedings, as the case may be. Reference can be made to the judgments/ orders passed by different co-ordinate Benches of this Court, viz:-

(i) Judgement dated 22.03.2018 passed in CWJC No.5049 of 2018, titled as Diwakar Kumar Singh versus The State of Bihar & Ors.;

(ii) order dated 31.07.2018 passed in CWJC No.13162 of 2018 titled as Rajesh Kumar Pandit @ Rajesh Pandit Vs. The State of Bihar & Ors.;

(iii) order dated 31.07.2018 passed in CWJC No.14242 of 2018 titled as Amar Kumar Vs. The State of Bihar & Ors.;

(iv) order dated 12.02.2018 passed in CWJC No.2437 of 2018 titled as Mahendra Manjhi Vs. The State of Bihar & Ors.;

(v) judgement dated 12.02.2018 passed in CWJC No.2470 of 2018 titled as Laxman Das @ Lakshman Ravidas Vs. The State of Bihar & Ors.;

(vi) order dated 11.09.2017 passed in



CWJC No.13158 of 2017 titled as Sanjay Kumar Versus The State of Bihar & Ors.;

(vii) order dated 27.03.2018 passed in CWJC No.5528 of 2018 titled as Bikash Kumar Vs. The State of Bihar & Ors.;

(viii) order dated 27.03.2018 passed in CWJC No.5528 of 2018 titled as Bikash Kumar Versus The State of Bihar & Ors.;

(ix) order dated 01.05.2018 passed in CWJC No.7755 of 2018 titled as Anandi Prasad Versus The State of Bihar & Ors.;

(x) order dated 01.05.2018 passed in CWJC No.7644 of 2018 titled as Suraj Ram Versus The State of Bihar & Ors.;

(xi) order dated 07.08.2018 passed in CWJC No.15435 of 2018 titled as Kalesar Chaudhari Versus the State of Bihar & Ors.;

(xii) judgement dated 18.01.2019 passed in CWJC No.1215 of 2019 titled as Raushan Kumar @ Raushan Kumar Singh Versus The State of Bihar & Ors.;

(xiii) judgement dated 29.01.2019 passed in CWJC No.1620 of 2019 titled as Asharfi Kumar @ Rakesh Kumar Versus the State of Bihar & Ors.;

(xiv) judgement dated 08.02.2019 passed in CWJC No.2380 of 2019 titled as Avinash Kumar Versus the State of Bihar & Ors.;

(xv) judgement dated 29.01.2019 passed in CWJC No.1648 of 2019 titled as Roshan Kumar Versus The State of Bihar & Ors.; and

(xvi) judgement dated 22.01.2019 passed in CWJC No.1314 of 2019 titled as Shanti Devi



Versus The State of Bihar & Ors.

In fact, in CWJC No. 5049 of 2018 titled as **Diwakar Kumar Singh Versus the State of Bihar & Ors.** the Court issued the following directions:-

“That apart, in the confiscation proceedings, the confiscating authority shall take note of the provisions of Section 56 of the Bihar Prohibition and Excise Act, 2016 and record a positive finding after hearing the petitioner as to whether when the petitioner is found or the vehicle is found to be used by a person in drunken condition and no liquor is seized from the vehicle or when the vehicle is not used for transportation of liquor, whether the provision of Section 56 of the Act will apply. It shall be mandatory for the confiscating authority to decide this issue before passing any order on the confiscation proceedings. The confiscating authority shall consider the provision of Section 56 of the Act, apply his mind and pass a speaking order with regard to confiscation initiated. Without deciding the aforesaid issue as a preliminary issue, further proceedings in the confiscation proceedings shall be prohibited.

We further request the office of the Advocate General to communicate this order to all the District Magistrates in the State of Bihar, who would be mandated to pass an appropriate order in such cases where the vehicle has been confiscated under Section 56 of the Act only on the allegation that the vehicle was being driven in a drunken condition and no liquor was seized from the vehicle nor the vehicle used for transportation or carriage of liquor. The issue shall be



decided by each and every District Magistrate before proceeding in the confiscation proceedings where the allegation is about the vehicle being driven in a drunken condition and no liquor was found from the possession of the vehicle.

It shall be the duty of the Advocate General to communicate this order to each and every District Magistrate and inform the Registrar General of this Court. In spite thereof, if we find that the District Magistrates are passing confiscation order without addressing this issue first, we may consider initiating contempt proceedings against the concerned District Magistrate.”

It is further seen that in CWJC No.15003 of 2019 titled as **Shobha Devi Versus The State of Bihar & Ors.** the Court observed as under:-

“6. On examination of aforesaid fact, particularly allegation of the petitioner that in a court proceeding before the learned Special Judge, Excise, a false information was given, we are of the opinion that the court of learned Special Judge, Excise would be competent court to pass an appropriate order, in view of provisions contained in Section 340 of the Code of Criminal Procedure, 1973.

7. Accordingly, the petitioner is granted liberty to file appropriate petition before the learned Special Judge, Excise for prosecuting the concerned police official.

8. So far as claim of compensation is concerned, obviously on going through the material on record, since there was no recovery of liquor from the



vehicle and it was a case, in which, the occupants of the vehicle were alleged to be in drunken condition and were creating nuisance, though were liable to be arrested. In any event, the vehicle was not required to be seized, since it was not liable to be confiscated.

9. In such situation, we are of the opinion that it is a fit case, in which, we may direct to pay adequate compensation to the petitioner, being owner of the vehicle, to the tune of Rs.75,000/- (seventy five thousand), however, Sri Kumar Manish, learned Standing Counsel – 5 requests for granting an opportunity for obtaining detailed instruction and filing counter affidavit in the matter. The request of Sri Kumar Manish, S.C.-5 is allowed for filing counter affidavit so that final order may be passed.

10. It goes without saying that before filing counter affidavit, the respondent no. 4/Superintendent of Police, Darbhanga may conduct a preliminary inquiry regarding the conduct of the police officer, who had seized the vehicle of the petitioner and state all those facts in its counter affidavit, which must be filed by 29th of November, 2019. The affidavit must be sworn by the Superintendent of Police himself.

11. It further goes without saying that if after considering all the facts, including counter affidavit, which is proposed to be filed, the Court comes to the conclusion that the petitioner is entitled for claim of amount of compensation, which has been referred hereinabove, the said compensation amount must be recovered from the pocket of the police officer, who was responsible for such illegal seizure.”



Despite the same, only before this Court, when matters of similar nature came up for hearing on 16th of December, 2019, the learned Advocate General assisted by Shri Vikash Kumar, learned Standing Counsel-11, and Shri Vivek Prasad, learned Government Pleader-7, vehemently opposed the petitions for release of the vehicles. Consequently, the writ petitions were disposed of with the directions to the appropriate authorities to positively initiate/conclude confiscatory proceedings within a period of 30-45 days.

Without adjudicating the petitioner's petition on merits, we are of the considered view that interest of justice would be best met, if the petition is disposed of in the following terms:-

(a) Since the vehicle in question stands seized in relation to the FIR which stood registered long ago, in case confiscation proceeding has not been initiated, it must be initiated within a period of 15 days from today and that confiscation proceeding stands initiated, we direct the appropriate authority under the Act to forthwith ensure that such proceedings be concluded not later than 30 days.

(b) The petitioner undertakes to make himself available in the office of the concerned appropriate authority empowered under Section 58 of the Act i.e. District Collector, in his/her office on 24.01.2020 at 10:30 A.M.

(c) We further direct the appropriate authority to positively conclude the confiscation proceeding within next thirty days on appearance of the petitioner. If for whatever reason, such proceeding cannot be concluded, in that event it shall



be open for the authority to take such measures, as are permissible in law, for release of the vehicle in question by way of interim measure, on such terms as may be deemed appropriate, considering the attending facts and circumstances of the case.

(d) If eventually, the appropriate authority arrives at a conclusion that the property is not liable to be confiscated, it shall be open for the petitioner to seek damages in accordance with law and have appropriate proceedings initiated against the erring officials/officers.

Learned counsel for the petitioner states that the certified copy of the order shall be made available to the concerned District Collector on the date so fixed.

For future guidance, where parties have not approached this Court, we issue the following direction:-

The expression “reasonable delay” used in Section 58 of Chapter VI of the Act, in our considered view, necessarily has to be within a reasonable time and with dispatch, which period, in our considered view, three months time is sufficient enough for any authority to adjudicate any issue, more so, when we are dealing with confiscatory proceedings.

We clarify that we have not adjudicated the writ petition on merits and it shall be open for the parties to take all stand in the adjudicatory proceedings and wherever parties are aggrieved, it shall be open to them to initiate appropriate proceeding before the appellate authority.

Learned counsel for the State also undertakes to communicate the order to the concerned appropriate authority i.e. District Magistrate, empowered under Section



58 of the Act.”

(In C.W.J.C. No.17165 of 2019, order dated 14.1.2020)

“Heard learned counsel for the petitioner and learned counsel appearing on behalf of the State.

Learned counsel for the petitioner invites our attention to our earlier order dated 09.01.2020 passed in CWJC No. 20598 of 2019, titled as Md. Shaukat Ali Vs. The State of Bihar & Ors., and wants the petition to be disposed of in terms thereof.

With the consent of the learned counsel for the parties, the writ petition stands disposed of in the following terms.

The petitioner prays for provisional release of Pick Up Van (Tata Motor/SFC-407 D-Van) bearing Registration No. BR-06G-4211 which has been seized in connection with Taukauliya P.S. Case No. 709 of 2018 for the offences punishable under Sections 272, 273, 34 of the Indian Penal Code and Sections 30(a), 38(1), 41(1) of the Bihar Prohibition and Excise Act, 2016.

It is continued practice of this Court that in cases of drunken driving; no recovery from the vehicle; recovery of less than commercial quantity; where ex-facie, vehicle is not liable to be confiscated; where there is inordinate delay in initiating proceedings for confiscation of the vehicle etc., this Court has been directing the State to provisionally release vehicle/property, subject to initiation/conclusion/finalisation of the confiscatory proceedings, as the case may be. Reference can be made to the judgments/ orders passed by different co-ordinate Benches of this Court, viz:-

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Singh versus The State of Bihar & Ors.;

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(iv) order dated 12.02.2018 passed in CWJC No.2437 of 2018 titled as Mahendra Manjhi Vs. The State of Bihar & Ors.;

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(ix) order dated 01.05.2018 passed in CWJC No.7755 of 2018 titled as Anandi Prasad Versus The State of Bihar & Ors.;

(x) order dated 01.05.2018 passed in CWJC No.7644 of 2018 titled as Suraj Ram Versus The State of Bihar & Ors.;

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(xii) judgement dated 18.01.2019 passed in CWJC No.1215 of 2019 titled as Raushan Kumar @ Raushan Kumar Singh Versus The State of Bihar & Ors.;

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(xiv) judgement dated 08.02.2019 passed in CWJC No.2380 of 2019 titled as Avinash Kumar Versus the State of Bihar & Ors.;

(xv) judgement dated 29.01.2019 passed in CWJC No.1648 of 2019 titled as Roshan Kumar Versus The State of Bihar & Ors.; and

(xvi) judgement dated 22.01.2019 passed in CWJC No.1314 of 2019 titled as Shanti Devi Versus The State of Bihar & Ors.

In fact, in CWJC No. 5049 of 2018 titled as **Diwakar Kumar Singh Versus the State of Bihar & Ors.** the Court issued the following directions:-

“That apart, in the confiscation proceedings, the confiscating authority shall take note of the provisions of Section 56 of the Bihar Prohibition and Excise Act, 2016 and record a positive finding after hearing the petitioner as to whether when the petitioner is found or the vehicle is found to be used by a person in drunken condition and no liquor is seized from the vehicle or when the vehicle is not used for transportation of liquor, whether the provision of Section 56 of the Act will apply. It shall be mandatory for the confiscating authority to decide this issue before passing any order on the confiscation proceedings. The



confiscating authority shall consider the provision of Section 56 of the Act, apply his mind and pass a speaking order with regard to confiscation initiated. Without deciding the aforesaid issue as a preliminary issue, further proceedings in the confiscation proceedings shall be prohibited.

We further request the office of the Advocate General to communicate this order to all the District Magistrates in the State of Bihar, who would be mandated to pass an appropriate order in such cases where the vehicle has been confiscated under Section 56 of the Act only on the allegation that the vehicle was being driven in a drunken condition and no liquor was seized from the vehicle nor the vehicle used for transportation or carriage of liquor. The issue shall be decided by each and every District Magistrate before proceeding in the confiscation proceedings where the allegation is about the vehicle being driven in a drunken condition and no liquor was found from the possession of the vehicle.

It shall be the duty of the Advocate General to communicate this order to each and every District Magistrate and inform the Registrar General of this Court. In spite thereof, if we find that the District Magistrates are passing confiscation order without addressing this issue first, we may consider initiating contempt proceedings against the concerned District Magistrate.”

It is further seen that in CWJC No.15003 of 2019 titled as **Shobha Devi Versus The State of Bihar & Ors.** the Court observed as under:-



“6. On examination of aforesaid fact, particularly allegation of the petitioner that in a court proceeding before the learned Special Judge, Excise, a false information was given, we are of the opinion that the court of learned Special Judge, Excise would be competent court to pass an appropriate order, in view of provisions contained in Section 340 of the Code of Criminal Procedure, 1973.

7. Accordingly, the petitioner is granted liberty to file appropriate petition before the learned Special Judge, Excise for prosecuting the concerned police official.

8. So far as claim of compensation is concerned, obviously on going through the material on record, since there was no recovery of liquor from the vehicle and it was a case, in which, the occupants of the vehicle were alleged to be in drunken condition and were creating nuisance, though were liable to be arrested. In any event, the vehicle was not required to be seized, since it was not liable to be confiscated.

9. In such situation, we are of the opinion that it is a fit case, in which, we may direct to pay adequate compensation to the petitioner, being owner of the vehicle, to the tune of Rs.75,000/- (seventy five thousand), however, Sri Kumar Manish, learned Standing Counsel – 5 requests for granting an opportunity for obtaining detailed instruction and filing counter affidavit in the matter. The request of Sri Kumar Manish, S.C.-5 is allowed for filing counter affidavit so that final order may be passed.

10. It goes without saying that before filing counter affidavit, the respondent no. 4/Superintendent of



Police, Darbhanga may conduct a preliminary inquiry regarding the conduct of the police officer, who had seized the vehicle of the petitioner and state all those facts in its counter affidavit, which must be filed by 29th of November, 2019. The affidavit must be sworn by the Superintendent of Police himself.

11. It further goes without saying that if after considering all the facts, including counter affidavit, which is proposed to be filed, the Court comes to the conclusion that the petitioner is entitled for claim of amount of compensation, which has been referred hereinabove, the said compensation amount must be recovered from the pocket of the police officer, who was responsible for such illegal seizure.”

Despite the same, only before this Court, when matters of similar nature came up for hearing on 16th of December, 2019, the learned Advocate General assisted by Shri Vikash Kumar, learned Standing Counsel-11, and Shri Vivek Prasad, learned Government Pleader-7, vehemently opposed the petitions for release of the vehicles. Consequently, the writ petitions were disposed of with the directions to the appropriate authorities to positively initiate/conclude confiscatory proceedings within a period of 30-45 days.

Without adjudicating the petitioner’s petition on merits, we are of the considered view that interest of justice would be best met, if the petition is disposed of in the following terms:-

(a) Since the vehicle in question stands seized in relation to the FIR which stood registered long ago, in case confiscation proceeding has not been



initiated, it must be initiated within a period of 15 days from today and that confiscation proceeding stands initiated, we direct the appropriate authority under the Act to forthwith ensure that such proceedings be concluded not later than 30 days.

(b) The petitioner undertakes to make himself available in the office of the concerned appropriate authority empowered under Section 58 of the Act i.e. District Collector, in his/her office on 04.02.2020 at 10:30 A.M.

(c) We further direct the appropriate authority to positively conclude the confiscation proceeding within next thirty days on appearance of the petitioner. If for whatever reason, such proceeding cannot be concluded, in that event it shall be open for the authority to take such measures, as are permissible in law, for release of the vehicle in question by way of interim measure, on such terms as may be deemed appropriate, considering the attending facts and circumstances of the case.

(d) If eventually, the appropriate authority arrives at a conclusion that the property is not liable to be confiscated, it shall be open for the petitioner to seek damages in accordance with law and have appropriate proceedings initiated against the erring officials/officers.

Learned counsel for the petitioner states that the certified copy of the order shall be made available to the concerned District Collector on the date so fixed.

For future guidance, where parties have not approached this Court, we issue the following direction:-

The expression “reasonable delay” used in



Section 58 of Chapter VI of the Act, in our considered view, necessarily has to be within a reasonable time and with dispatch, which period, in our considered view, three months time is sufficient enough for any authority to adjudicate any issue, more so, when we are dealing with confiscatory proceedings.

We clarify that we have not adjudicated the writ petition on merits and it shall be open for the parties to take all stand in the adjudicatory proceedings and wherever parties are aggrieved, it shall be open to them to initiate appropriate proceeding before the appellate authority.

Learned counsel for the State also undertakes to communicate the order to the concerned appropriate authority i.e. District Magistrate, empowered under Section 58 of the Act.”

In Umesh Sah (supra), this Court had clarified that the expression “reasonable delay” under Section 58 of Chapter 6 of the Act has to be construed to be ‘not more than three months’.

It is seen that despite our observations, the appropriate authorities have not taken any action in initiating the proceedings for confiscation of the property under the Act. The litigants are, thus, forced to approach this Court by way of filing separate petitions.

Thus, today we are left with two options; either to initiate proceedings for contempt under the provisions of Contempt of Courts Act or under Article 215 of the Constitution of India or ask the Chief Secretary, Government of Bihar, to evolve a mechanism, self serving in nature, so as to ensure that the provisions of the Act are implemented in letter and spirit, expeditiously, without any



delay and with reasonable dispatch.

Why is it that the owners of the property are forced to approach this Court for release of the vehicles or property? Is it that there is no mechanism under the Act for initiating confiscatory proceedings at the earliest? Is it that there is insufficient infrastructure with the State Government for ensuring implementation of the provisions of the Act?

Illustratively, in the weekly list dated 27.1.2020, we notice that more than 75 cases stand filed and listed despite our order dated 9th of January, 2020. In the instant case, seizure is of the year 2019 and no proceedings of confiscation have commenced.

We are of the considered view that non-implementation of the Act is generally having a very serious adverse consequence on the dispensation of administration of justice. And, peculiarly, it is only when the matter was taken up by the Bench hearing the petition bearing C.W.J.C. No. 25266 of 2019 (Vikki Kumar Vs. The State of Bihar & Ors.) on 17.12.2019 that the State vehemently opposed release of the vehicle, contrary to the practice adopted hitherto before.

Be that as it may, at this point in time, we refrain from passing any order under the contempt jurisdiction, but direct the Chief Secretary, Government of Bihar, to file his personal affidavit dealing with each one of the issues highlighted (supra) as also elaborately indicating the mechanism which the State has or desires to evolve so as to prevent the litigants from directly approaching the Court for release of the vehicle and also ensuring early completion of the proceedings, be it confiscatory in nature or in an appellate jurisdiction, under the provisions of the



Bihar Prohibition and Excise Act, 2016.

Let an affidavit in that regard be positively filed within one week.

List this case on 6.2.2020.”

In the aforesaid decisions, we have already laid down the time-schedule within which all proceedings are necessarily required to be concluded and the outer limit is three months from the date on which this Court has directed the party to make himself available before the appropriate authority.

We clarify that petitioner undertakes to fully cooperate in the proceedings and we further clarify that in case the authorities are not able to conclude the proceedings within the time bound period, the vehicle shall be allowed to be released on such conditions as the appropriate authority may deem fit and proper.

As such, petition is disposed of making the directions contained in the orders referred to supra, applicable mutatis mutandis, insofar as applicable and possible, to the petitioner case.

Petitioner through learned counsel undertakes to make himself available on 10th of July, 2020 at 10:30 A.M. before the Collector, Saran in his office.

We only hope and expect that the authorities under



the Act shall take appropriate action at the earliest in accordance with law and within the time schedule fixed, failing which the vehicle shall be allowed to be released.

Liberty reserved to the petitioner to take recourse to such remedies as are otherwise available in accordance with law if the need so arises.

Petition stands disposed of with the aforesaid observations/directions.

(Sanjay Karol, CJ)

(S. Kumar, J)

K.C.Jha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	22.6.2020
Transmission Date	N/A

