

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14756 of 2019

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Pappu Bind son of Suresh Bind resident of Village- 310, Deshlal Barma
Nagar, Rukunpura, Police Station- Danapur, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Excise,
Govt. of Bihar, Patna.
2. The District Magistrate, Patna.
3. The Superintendent of Police, Patna.
4. The Deputy Superintendent of Police, Danapur, Patna.
5. The Station House Officer, Danapur, Patna.
6. The Investigating Officer of Danapur Police Station Case No. 162 of 2019.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anil Kumar Singh
For the Respondent/s : Mr. Kumar Manish (Sc5)

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 30-06-2020

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

Petitioner has prayed for the following relief:-

“That this is an application for issuance of writ in
the nature of mandamus to directing and commanding the
respondent authorities to release the Delivery Van (RLW-
2960)/Bolero Mahendra Pick-up Van bearing Registration
No. BR01GF-2495 which illegally been seized in connection
with Danapur police station case no. 162 of 2019 registered
under Section 379, 411/34 of the Indian Penal Code and
Section 37(b) of the Bihar Prohibition and Excise Act, 2018.
And any other order or orders as Your Lordships may deem



fit and proper.”

It has been submitted by learned counsel for the petitioner that neither any illicit liquor was recovered from the vehicle in question nor any confiscation proceeding has been initiated against the seized vehicle.

It has been submitted by learned counsel for the State that in case of no recovery of any illicit liquor from the vehicle, the vehicle is not liable for confiscation and same has been decided by the Excise Commissioner, Bihar, Patna, in appeal of confiscation being Case No. 107 of 2019 (arising out of Tariyani P.S. Case No. 184 of 2018) titled as Ajit Rai & Ors Vs. The Collector, Sheohar. The operative part of the order reads as follows:-

“Hence, even as per the substituted Section 32 of the Amended Act, the presumption is only vis-a-vis the person, whose vehicle is liable to confiscation and such vehicle can be made liable to confiscation only when it is used, as per Section 56(d), for carrying or transporting the prohibited article under the Act. Thus, 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.

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 of 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 owners of the said vehicle as there is no recovery of liquor from these motorcycles.

Let the copy of this order be communicated to all District Magistrates, Superintendent of Police and Assistant Commissioner/Superintendent of Prohibition for information and necessary action.”

It has been submitted by the learned counsel for the petitioner that an application under Section 451 of Cr.P.C has already been filed before the Special Court (Excise) for provisional release of the seized vehicle in Special Case No. 2239 of 2019 arising out of Danapur PS Case NO. 162 of 2019 which is still pending and no order has been passed on said application.

As seized vehicle is not liable for confiscation and bar of jurisdiction in confiscation under Section 60 of the Excise Act, 2016 will not be applicable 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 and since application has already been filed by the petitioner Special Court is directed to dispose of said petition within **30** days from receipt/production of order passed by this Court.



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	03.07.2020.
Transmission Date	NA

