

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13568 of 2019

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Sangam Prasad, Son of Late Ramji Sah, Resident of Village- New Makrain,
Ward No. 11, Near Railway Field, P.S.- Dalmiyanagar, District- Rohtas.
... .. Petitioner/s

Versus

1. The State of Bihar through Excise Commissioner, New Secretariat, Patna.
2. The District Magistrate, Rohtas.
3. The Superintendent of Police, Rohtas.
4. S.I.-cum- Officer-in-Charge, Dehri Town P.S., District- Rohtas.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. N. K. Agarwal, Sr. Advocate Mr. Vijay Anand, Advocate
For the Respondent/s	:	Mr. Vikash Kumar (SC11)

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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 parties.

This writ petition has been filed on behalf of petitioner to release the Hyundai Grand I-10 Car bearing registration no. BR 24T 2775, cash of Rs. 4,71,140/- and one Samsung Smart Phone in favour of petitioner which were seized in Dehri P.S. Case No. 242 of 2019 instituted under Section 35/38 of Bihar Prohibition & Excise Act, 2016.

The vehicle of petitioner was seized by the police and from his pocket Rs. 4,71,140/-, and Samsung Duos Mobile was recovered. Neither any illicit liquor was recovered from the seized car nor the petitioner was found in drunken condition.

A Division Bench of this Court in CWJC No. 19300 of



2018 (**Chhedhi 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'.”

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.”

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

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.07.2020
Transmission Date	NA

