

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24864 of 2019

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Mani Bhushan Kumar son of Jagdish Prasad resident of Village- Sabnima,
P.O. and P.S.- Athmalgola, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Excise Commissioner, Patna.
2. Excise Superintendent, Patna.
3. Sub- Inspector Excise, Patna.
4. Officer-in- Charge, Shah Jahanpur Police Station, Patna.
5. District Magistrate, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ajay Kr Singh No.1
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 : 07-07-2020

Heard learned counsel for the petitioner and the State.

Petitioner has prayed for following relief:-

“(i) For issuance of a writ in the nature of writ of mandamus directing the respondents to release the Mahindra Bolero DI 2WD 85 TR BS 2 Jeep bearing registration No.BR01PA8402, Chassis No.MAIXA2G FKA5B – 65317, Engine No. GFA4B18622 in the favour of the petitioner. The said vehicle has been seized in Shahjahapu P.S. Case No.31/2019 under various sections of I.P.C., Bihar Prohibition Excise Act 2016 and Motor Vehicle Act.

(ii) For issuance of any other appropriate writ as this Hon’ble Court may deem fit and proper.”

Allegation is driving the bolero vehicle bearing registration No.BR01PA 8402 in a rash and negligent manner



and in a drunken condition by the driver of said vehicle causing accident in which two persons were injured and vehicle was also damaged giving rise to Shahjahapu P.S. Case 31 of 2019 dated 1.5.2019 instituted under Sections 279, 337, 338, 427 of IPC and 37(B)(c) of Bihar Prohibition and Excise Act and thereafter vehicle was seized.

Petitioner claims to be owner of the vehicle and since there is no recovery of any illicit liquor and allegation is driving vehicle in a drunken condition as such, vehicle is not liable for confiscation and bar of jurisdiction in confiscation under Section 60 of the Excise Act is not applicable, as such concerned Special Court (Excise) can exercise jurisdiction under Section 451 of Cr.P.C for release of the vehicle during pendency of criminal trial.

In view of law laid down by Division Bench of this Court in case of Diwakar Kumar Singh vs. State of Bihar since reported in 2018 (3) PLJR 403 and following said judgment as well as other judgments passed by this Court, the Excise Commissioner, Bihar Patna in appeal arising out of Confiscation Case No. 107 of 2019 Ajit Roy Vs. Collector, Sheohar has held that transportation of prohibited article under the Act is a sine qua non for a vehicle to be confiscated.



The relevant paragraph of order passed in Appeal by
Excise Commissioner is quoted below:-

“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. 107/2019 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 owner of the said vehicle.”

The writ petition is disposed of with liberty to petitioner to file a petition under Section 451 of Cr.P.C for release of vehicle before the concerned Special Court (Excise), where the trial of case arising out of Shahjahapu P.S. Case 31 of 2019 is pending and the Special Court (Excise) is directed to dispose of such petition within 30 days from the date of filing.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.07.2020
Transmission Date	NA

