

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24705 of 2019

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Jamila Khatoon Wife of Izharul Haque, Resident of Village-Chadi, Barharia,
Chanri, Sikandrpur, Police Station-G.B. Nagar, District-Siwan.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Excise,
Govt. of Bihar, Patna.
2. The District Magistrate, Siwan.
3. The Superintendent of Police, Siwan.
4. The Officer in Charge, Mairwa, Police Station, District-Siwan.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Bijay Prakash 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 THE CHIEF JUSTICE)

Date : 06-07-2020

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

Petitioner has prayed for the following relief:-

“(i) For issuance of writ in the nature of
CERTIORARI for quashing the order dated 28.11.2019 as
contained in Mairwa P.S. Case No. 257 of 2019 passed by the
learned 2nd Additional Sessions Judge Cum Special Judge,



Siwan, in which petitioner moved for the release of the Scorpio vehicle in question and same has been rejected by him.

(ii) For issuance of writ in the nature of Mandamus to direct the respondents to release the vehicle Scorpio bearing Registration No. BR29-PA-4407, Chassis NO. MA1TA2TDKJ2B20139, Engine No. TDJ4A83990 of the petitioner which was seized in connection with Mairwa Police Station Case No. 257 of 2019 registered u/ss 30(a), 37(b) and 37(c) of the Bihar Prohibition and Excise Act, 2016.”

Allegation is of recovery of 500 ml Beer from the pocket of co-accused Sonu Chauhan.

It has been submitted by learned counsel for the petitioner that petitioner is the owner of the vehicle and neither any illicit liquor was recovered from the vehicle in question nor owner of the vehicle Jamila Khatoon(petitioner) has been made party, as such, the vehicle is not liable for confiscation.

It has been submitted on behalf of petitioner that confiscation proceeding has been initiated. However, even if, any confiscation proceeding has been initiated, same is to be dropped by the confiscating officer, in view of decision of appellate authority.

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).

As the seized vehicle is not liable for confiscation, bar of jurisdiction in confiscation under Section 60 of the Excise Act is not applicable and the Special Court (Excise) can exercise jurisdiction under Section 451 of Cr.P.C for release of the vehicle during pendency of criminal trial.

Accordingly, petitioner is directed to file an application before the concerned Special Court (Excise), under Section 451 of Cr.P.C for release of the vehicle which has been seized by the police in the case as same 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 release of the 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 date of filing of said application.



With the aforesaid observation and direction, this writ
petition is disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

veena/rajiv

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

