

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.51 of 2020

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Ashish Kumar, Son of- Naresh Yadav Resident of- Kajichak, Ratanpur, P.S.-
Bariarpur, District- Munger.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise, Department,
Govt. of Bihar.
2. The District Magistrate, Jamui.
3. The Superintendent of Police, Jamui.
4. The Inspector, Excise Department, Munger.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sanjay Sinha
For the Respondent/s : Mr.Kumar Manish (Sc5)

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
and

HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

Date : 03-02-2020

Heard Mr. Sanjay Sinha, learned counsel for the
petitioner and Mr. Prashant Kumar, learned A.C. to S.C.-5
appearing on behalf of the respondents.

The present writ application has been filed for release of
Mahindra Pick-up Van being Engine No.TBK1F59761, Chasis
No.MA1ZN2TBKK1F52479, in favour of the petitioner, which
has been seized in connection with Excise Case No.379C2/19
registered for the offence punishable under Section 30(a) of the



Bihar Prohibition and Excise Act, 2016, as amended by the Amendment Act 8 of 2018 (hereinafter referred to as 'the Act').

The relief, as prayed for in paragraph No.1 of the writ application reads as follows :-

"1. That the present writ application is being filed for issuance of writ or writs, order or orders direction or directions to the respondents to grant of following reliefs to the petitioner :-

(a) For release of vehicle Mahindra Pickup Van of the petitioner, Engine No.TBK1F59761, Chasis No.MA1ZN2TBKK1F52479, which was seized in connection with Excise Case No.379C2/19 dated 20.09.2019, registered for offence under Section 30(a) of the Bihar Prohibition and Excise Act, 2016.

(b) For any appropriate relief or reliefs may grant in favour of the petitioner as your Lordship may deem fit and proper."

The prosecution case is to the effect that the informant received a secret information that a Mahindra Bolero pickup van is carrying illicit liquor coming from Jharkhand via Jamui. Consequently, raid was laid and from the vehicle in question, 282.450 litres of Indian Made Foreign Liquor were recovered, leading to registration of Excise Case No.379C2 of 2019.

It is submitted by learned counsel for the petitioner that the petitioner is the registered owner of the vehicle in question, however, certificate of registration has not been brought on record. It has further been submitted that confiscation proceeding has been



initiated but it has not been concluded till date and the vehicle in question is rotting in the open sky.

Mr. Prashant Kumar, learned counsel for the respondent-State submits relying upon counter affidavit filed on behalf of the respondent No.2, District Magistrate, Jamui to the effect that the notice was issued to the petitioner in confiscation case being Confiscate Case No.62 of 2019 vide Memo No.2389 dated 14.11.2019 and next date for hearing was fixed on 22.11.2019 and later on again the matter was also fixed for hearing on 24.01.2020. From the counter affidavit, it further appears that neither the Excise Department nor the Confiscation authority could locate the registration number.

Considering the fact that once the confiscation proceeding is initiated, the exercise of discretionary jurisdiction under Article 226 of the Constitution of India, having self imposed restriction, can be exercised in exceptional or a monstrous situation, such as when fundamental rights have been violated, the impugned order or the proceedings are wholly without jurisdiction or where the principle of natural justice has been grossly violated or vires of the Act is under challenge, which has also been deprecated by the Apex Court in the case of **State of Karnataka Vs. K. Krishnan (2000) 7 Supreme Court Cases 80** and in the



case of **State of West Bengal and Ors. Vs. Sujit Kumar Rana, (2004) 4 Supreme Court Cases 129** and a Full Bench of this Court in the case of **Baleshwar Roy Vs. The State of Bihar and Ors , 2018(4) PLJR 970.**

In view of the discussion made above, we are not inclined to pass order for release of the vehicle at this stage. However, it is expected from respondent No.2, District Magistrate, Jamui to conclude the confiscation proceeding being Confiscation Case No.62 of 2019, within a period of six weeks of receipt or production of the order in accordance with law.

The petitioner is also expected to appear regularly and participate in the confiscation proceeding.

Accordingly, with the above observation and direction, the present writ application is disposed of.

The office is directed to communicate this order to the District Magistrate, Jamui for its strict compliance.

(Dinesh Kumar Singh, J)

sanjeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.03.2020
Transmission Date	NA

(Anil Kumar Sinha, J)

