

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.350 of 2020

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Md. Maasum Ali @ Mohammad Masoom Ali, S/o- Moinuddin, Resident of
Village- Bhansia Ward No. 5, Parsadpur, P.S.- Mahalgaon, District- Araria.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department Govt. of Bihar.
2. The District Magistrate Araria.
3. The Superintendent of Police Araria.
4. The Excise Superintendent Araria.
5. The Officer Incharge Jokihat (Mahalgaon) P.S.- Mahalgaon, District- Araria.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Manish Kumar, Adv
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 : 09-07-2020

The proceedings of the Court are being conducted through Video Conferencing and the Advocates joined the proceedings through Video Conferencing from their residence.

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

Petitioner has prayed for the following relief:-

“ For issuance of an appropriate writ, order or



direction/ directing the respondent authority concern to release the four wheeler (Renault) KWID RXT OUTBACK white Registration No. BR11AD-9893 along with Rs. 44,750/- (forty four thousand seven hundred fifty five rupees only) and one SAMSUNG GALAXY mobile A30 model and a keypaid mobile which has been seized in connection with Jokihat (Mahalgaon) P.S. Case No. 412 of 2019 instituted for the offences under Section 279, 337, 388 of the Indian Penal Code and Section 30(a)/37 Bihar Prohibition and Excise Act 2016.”

Allegation is recovery of 750 ml. of foreign liquor from the vehicle which was being driven by the petitioner in a rash and negligent manner and in a drunken condition which also collided with the police vehicle causing damage to both the vehicles. There is recovery of cash of Rs. 44 750/- and mobile phone from the possession of the petitioner for which FIR was instituted under Section 279, 337, 338 of Indian Penal Code and Section 30(a) and 37(c) of Bihar Prohibition and Excise Act, 2016 giving rise to Jokihat (Mahalgaon) P.S. Case 412 of 2019 dated 25.11.2019 and the vehicle, illicit liquor, cash and mobile were seized.

As there is allegation of recovery of illicit liquor from the seized vehicle the vehicle becomes liable for



confiscation under Section 56 of the Act and it has been stated in the counter affidavit that Superintendent of Police Araria, vide Memo dated 28.12.2019 has send recommendation to the District Magistrate, Araria for confiscation of the vehicle and thereafter the District Magistrate, Araria has initiated Confiscation Case No. 55/2020 and notices has already been issued to the petitioner and he has appeared in the proceeding.

The District Collector-cum- Confiscating Officer is directed to conclude the confiscation proceeding within 60 days from the date of filing of show cause by the petitioner, failing which he shall release the vehicle provisionally till conclusion of confiscating proceeding on the production of document of ownership and registration in his name with two sureties (one local) to the extent of the value of the vehicle as indicated in insurance document.

The petitioner while submitting the surety bond shall also furnish the following affidavit/undertakings:-

- (i) That the vehicle in question has never been involved in any offence of similar nature in past and shall not indulge in similar offence in future.
- (ii) That the petitioner shall not indulge in



creating any third party right or interest in respect of the vehicle during the pendency of the proceeding and shall not alienate the vehicle during this period.

(iii) The petitioner shall furnish an undertaking to produce the vehicle before the confiscating authority as and when required.

(iv) Prior to release the vehicle a Panchnama would be got prepared by the confiscating authority wherein the photograph of the vehicle shall be taken and will be certified by the petitioner and the same shall be kept on record so that in future if so required it may be used as a secondary evidence. The petitioner shall undertake not to challenge the said Panchanama in course of proceeding/trial.

As far as release of cash and mobile is concern same are not liable for confiscation under section 56 of the Excise Act, as such, bar of jurisdiction in confiscation as contemplated under Section 60 of the Excise Act will not be



applicable and the Special Court Excise can exercise its jurisdiction to release the articles which are not liable for confiscation.

Petitioner is granted liberty to file an application in the court of Special Judge, Excise for release of cash and mobile and on such application being filed, the Special Court Excise is directed to dispose of said petition within 30 days from the date of filing of such petition.

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

(Sanjay Karol, CJ)

(S. Kumar, J)

Rajiv/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

