

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2638 of 2021

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Gauri Shankar Gupta Son of Nanku Prasad Resident of Vishwanath Mandir
Road, Lakkhi Bagh, Masaurhi, Police Station- Masaurhi, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department, New Secretariat, Patna.
2. The Principal Secretary Excise Department, Government of Bihar, New Secretariat, Patna.
3. The District Magistrate, Patna.
4. The Superintendent of Police, Patna.
5. The Officer-in- Charge, Masaurhi Police Station, District- Patna.
6. The Investigation Officer of Masaurhi P.S. Case No. 455/2020, dated 27.07.2020, P.S.- Masaurhi, District- Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sanjeet Kumar, Adv
For the Respondent/s : Mr. Kumar Manish SC-5

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 26-03-2021

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s):-

“For issuance of writ/writs, order/orders,
direction/directions, commanding the respondents to release



the petitioner's vehicle (Pick Up Delivery Van, Tata Motors) bearing Registration No. BR-02-Q-1230, and having Engine No. 497SP38CYY614179, Chassis No. MAT4780112B9609465 which has been seized in connection with Masaurhi P.S. Case No. 455/2020, registered for offences punishable under Sections 30(d) of Bihar Prohibition Excise Amendment Act, 2018 and section 2/3/4 of Bihar Excise (Mahua Flower) Rules, 2006, and is rotting in open air in the premises of Masaurhi P.S since 27.07.2020 without any purpose and even contrary to the provisions of law.”

Allegation is recovery of 1250 Kg of Mahua flower kept in 25 plastic bags from the seized Pick-up Van. Petitioner claims to be the owner of the seized Pick-up Van.

A Division Bench of this Court in C.W.J.C. No. 23163 of 2018 (Umesh Kumar @ Umesh Mahto versus The State of Bihar and Ors. and other analogues matters) has held that Mahua Flower in its raw form does not come within the definition of intoxicant under the Excise Act and mere possession of Mahua Flower on the vehicle does not make the vehicle liable for confiscation unless and until from attending circumstances it can be inferred that Mahua Flower was likely to be used for preparation of country made liquor.

In the facts and circumstances of the case, **the District Magistrate/Confiscating Officer, Patna**, is directed to



provisionally release the vehicle of petitioner after due identification of ownership of the vehicle which was stolen and subsequently recovered and seized by the police in excise case on production of ownership and registration papers with respect to vehicle in question in his name with two sureties (one local) to the extent of the value of the vehicle as indicated in the insurance document.

The petitioner while submitting the sureties shall also furnish the following affidavits/undertakings:

(i) That the petitioner shall not indulge in creating any third party right or interest in respect of the vehicle during the pendency of the confiscation proceeding and shall not alienate the vehicle during this period.

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

(iii) Prior to release of the vehicle, a Panchanama would be prepared wherein the photograph of the vehicle shall be taken and will be certified by the petitioner and same shall be kept on record so that in future if so required, it may be used as a secondary evidence. The petitioner shall furnish an undertaking not to challenge the said Panchanama.

The release shall be allowed within a period of 14 days from the date of submission of the sureties and the undertakings as stated above, which would however be subject to finalization



of the confiscation proceeding.

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

(Sanjay Karol, CJ)

(S. Kumar, J)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.04.2021
Transmission Date	NA

