

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4029 of 2021

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1. Ajit Kumar S/o Late Ramu Yadav Resident of Village-Mosma, P.S.-Warisaliganj, District-Nawada.
 2. Sandeep Kumar S/o Anandi Singh Resident of Village-Chirigah, P.S.-Warisaliganj, District-Nawada.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna.
2. The Divisional Commissioner, Excise Department, Patna Division Patna.
3. The District Collector, Kaimur at Bhabhua.
4. The District Superintendent of Police, Kaimur at Bhabhua.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Sheo Kumar Prasad, Advocate
For the Respondent/s : Mr. Vikash Kumar, SC 11

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 05-04-2021

Heard the parties.

Petitioner has prayed for following relief(s):-

(I) To release the total rupees Rs.1153200/- (eleven lacs fifty three thousand two hundred) belongs two persons containing in two bags. The rupees 608700/- (six lacs eighty seven hundred containing in one bag of Ajit Kumar and rupees 544500 (five lacs forty four thousand five hundred) in other bag of Sandepp Kumar which was seized by the respondents authorities in connection with Mohaniya P.S. Case No.257/2020



for the offence registered under Sections 37(i)(ii) and 30(a) of the Excise Case.

(II) The respondent authorities seized the money illegally contrary to the excise case.”

Allegation is recovery of Rs.6,08,700/- from the bag of Ajit Kumar, recovery of Rs.5,44,500/- from the bag of Sandeep totalling Rs.11,53,200/- and from the bag of Mithilesh Kumar, two kingfisher can beer each 500 ml. was recovered who were travelling on a Scorpio vehicle and were found in drunken condition and regarding cash, they said same belongs to brick-kiln owner which was to be distributed among the brick-kiln labourers as wages and, accordingly, cash, liquor and bolero vehicle were seized giving rise to Mohaniya P.S. Case No.257/2020 for the offence registered under Sections 37(i)(ii) and 30(a) of the Excise Act.

A Division Bench of this Court vide order dated 18.04.2019 passed in C.W. J.C. No. 19300 of 2018 (Chhedi Mahto @ Chedi Mahto Vs. the State of Bihar and Ors.) has held that cash is not a prohibitory item under the Excise Act liable for confiscation, as such, bar of jurisdiction under section 60 of the Excise Act in confiscation will not be applicbale and, as such, Special Court, Excise where the excise case is pending,



has jurisdiction to pass an order for release of seized cash on usual terms and conditions, as imposed for release of seized articles. The operative part of the order is reproduced below:-

“We have heard learned counsel for the parties and we have perused the materials on record and examined the provisions of Section 58 of 'the Act' which nowhere empowers the Confiscating authority to confiscate any money found in possession of a person charged with an offence under 'the Act'. The order is illegal because cash is not a prohibitory item under 'the Act' and thus could not have been confiscated by the Confiscating authority in purported exercise of power under the said 'Act'.”

The writ petition is disposed of with liberty to petitioner to approach the Special Court, Excise and file a petition for release of cash during pendency of trial and the Special Court, Excise shall dispose of such petition within 30 days from the date of its filing.

(Sanjay Karol, CJ)

Sanjay/-

(S. Kumar, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.04.2021
Transmission Date	NA

