

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12651 of 2021

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Upendra Singh, S/O Late Nageshwar Singh, R/O Vill. - Bisarpur, P.S. -
Naubatpur, Dist. - Patna.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Excise and Prohibition Department, Govt. of Bihar, Patna.
2. The District Magistrate - Cum Collector, Patna.
3. The Superintendent of Police, Patna.
4. The Station House Officer, Bihita Police Station, District- Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Dr. Kamal Deo Sharma, Advocate
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)

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

Date : 27-07-2021

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s).

“(i) That this is an application for issuance of appropriate writ/writs, order/orders, direction/directions for commanding the respondents authorities to release the Auto Rickshaw bearing Registration No. BR-01PD-6359 having Engine No. R2K2216692, Chassis No. MBX0000ZFPK591395 in favour of petitioner who is the owner of the vehicle in question which has been seized in connection with Bihita P.S, Case No.120/2020 on 14.02.2020 registered for the offence U/S. 30(a) of Bihar Prohibition and Excise (Amendment) Act, 2018.

(II) For the further issuance of other appropriate writ/writs, direction/ directions, order/orders as may be deem fit and proper.”

Allegation is recovery of 120 Kg of kachcha Mahua

from the vehicle on which two ladies were travelling. It is submitted on behalf of petitioner that he is the owner of the seized Auto Rickshaw which was used as passenger vehicle and two ladies were travelling on said vehicle from whose possession kachcha Mahua was recovered for which petitioner cannot be held responsible. It is further submitted that carrying kachcha Mahua itself is not an offence under the Excise Act unless it is established that same was being transported for preparation of country made liquor.

In the facts and circumstances of the case, concerned District Magistrate/Confiscating Authority is directed to provisionally release the vehicle of petitioner after due identification of ownership of the vehicle 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 observations, this writ petition is disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Rajiv/veena-

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