

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12961 of 2021

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Kamlesh Kumar Son of Takur Prasad, Resident of Village - Gobarachha, P.S.
- Bhagwanpur, District - Kaimur. At present, Resident of Village - Chhawani
Mohalla Bhabua Ward No. 9, P.O. and P.S. - Bhabua, District - Kaimur.

... .. Petitioner/s

Versus

1. The State of Bihar through Commissioner, Excise Department, Govt. of Bihar.
2. The Commissioner, Excise of Bihar.
3. The Collector, Kaimur at Bhabua.
4. The Superintendent of Excise, Kaimur at Bhabua.
5. The Officer - In - Charge, Police Station D.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Chandra Mohan Jha, Advocate
For the Respondent/s : Mr.Kumar Manish (S.C. 5)

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

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

Date : 29-07-2021

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s).

- “(i) That the order dated 10.03.2021 passed by 2nd Addl. Sessions Judge Cum Special Judge Kaimur in Excise Case No. 469/2020.
- (ii) That the authorities be directed to release the vehicle of petitioner’s vehicle i.e. Motor Car (L.M.V.) Scorpio- S-2 bearing Registration No. BR26K6575, Chassis No. MA1TA2TDKG2K34479, Engine No. TDG4K82125 and one OPPO Mobile having Sim No. 7274003463, IMEI No. 863115044735936, IMEI No. 863115044735928 belongs to the petitioner seized in Bhagwanpur P.S. Case No. 127/2020 for the offences U/s 30(a) Bihar

Prohibition Excise Act 2018 read with Section 420, 497, 468, 353/34 of the I.P.C.

(iii) The recommendation of the Investigating Officer as relief in impugned order dated 10.03.2021 be held to be thoroughly without jurisdiction arbitrary, unjust and malafied.

(iv) That if this Hon'ble Court so desires a proceeding for contempt be initiated against respondents with all disobedience of the enter of this Hon'ble Court contained in Annexure-5.

(v) For relief/reliefs as deemed fit and proper under the facts and circumstances.”

It is submitted on behalf of petitioner that no illicit liquor was recovered from his vehicle or from his possession rather the same was recovered from the Bolero Pick Van and the petitioner was driver of the Scorpio which was being used as liner and he has been falsely implicated in this case only on the basis of suspicion, as such, seized vehicle is not liable for confiscation under Section 58 of the Excise Act.

It has come in the order passed by learned Special Judge, Excise, Kaimur at Bhabhua (as contained in Annexure-5) which is quoted below:-

“Vide letter no. 1322/2021 dated 20.04.2021 the Investigating Officer of the case has informed that a recommendation towards confiscation of the abovesaid vehicle has already been sent to the District Collector, Kaimur vide letter no. 0799/2021 dated 06.03.2021.”

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)

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