

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13779 of 2021

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Ramanand Yadav son of Rekha Yadav resident of Village- Bachhepar, P.S. Barlalganj, District- Gorakhpur (U.P.).

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Excise Department Govt. of Bihar, Patna.
2. The District Magistrate, Siwan.
3. The Superintendent of Police, Siwan.
4. The Officer-in- Charge, Hussainganj Police Station, Saran.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ajay Kumar Tiwary, Advocate
For the Respondent/s : Mr.Vivek Prasad (G.P.7)

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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 : 24-08-2021

Heard learned counsel for the parties.

Petitioner has prayed for the following relief:-

(a)For issuance of writ in the nature of Mandamus commanding and directing the respondent authorities to release the Bolero of the petitioner bearing Reg. No. BR04N-1107/UP53BP5319, Chasis No. MAJXA2GHK D5E66579, Engine No. GHD4D68284 seized by the Hussainganj Police in connection with Hussainganj P.S. Case No. 175 of 2020 dated 06.07.2020 registered for the offence under Sections 272, 273 of Indian Penal Code and Sections 30(a) and 41(1) of Bihar Prohibition and Excise Act 2016, in favour of the petitioner or his representative, the vehicle in question has been seized with allegedly wine total

132 ltr. Foreign liquor the case is presently pending in the court of learned Addl. Sessions Judge-2nd-cum-Special Judge Excise, Siwan.

(b) For the issuance of any other relief/reliefs to which the petitioner may found entitled to in the facts and circumstances of the present facts and circumstances of the case in favour of the petitioner.”

It is submitted on behalf of petitioner that he is the owner of the seized vehicle which was stolen by unknown thieves on 21.10.2019 for which he has lodged FIR giving rise to Gorakhpur FIR No. 0328 dated 23.10.2019 for the offence punishable under Section 379 of IPC, and same was being misused by the miscreants for transportation of illicit liquor and 132 litres of foreign liquor was recovered by the police from said stolen vehicle giving rise to Hussainganj P.S. Case No. 175 of 2020 dated 06.07.2020 for the offence punishable under Sections 272, 273 of IPC and 30(a), 41(1) of the Bihar Prohibition and Excise Act, 2016, and the accused persons were apprehended and the vehicle was seized by the police.

Petitioner claims to be owner of the seized vehicle and same was stolen on 21.10.2019 for which he had earlier instituted a case as such, petitioner cannot be held to be responsible for transportation of illicit liquor, however, since the vehicle was used for transportation of illicit liquor same is liable

for confiscation. However, it shall be open to the petitioner to file his show cause before the Confiscating Authority that he had no knowledge about his stolen vehicle being misused by miscreants for transportation of illicit liquor.

In the facts and circumstances of the case, the District Magistrate/Confiscating officer, Siwan 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 observations and direction, 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