

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15438 of 2021

1. Anand Kumar Tiwari Son of Ajay Shankar Tiwary, R/o Barari Chowk, P.S. Barari and District Bhagalpur.
2. Rajesh Pandey Son of Binay Kumar Pandey, Resident of Pandey Tola, Baijani, P.S. Jagdishpur and District-Bhagalpur.
3. Piyush Tiwari S/o-Pratap Narayan Tiwari, Pandey Tola, Baijani, P.S. Jagdishpur and District-Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Registration, Excise and Prohibition, Government of Bihar.
2. The Excise Commissioner, Bihar, Patna.
3. The Collector, Bhagalpur.
4. The Supetintendent of Police, District-Bhagalpur.
5. SHO, Industrial Area Police Station, Bhagalpur.

... .. Respondent/s

(The proceedings of the Court are being conducted by Hon’ble the Chief Justice /Hon’ble Judges through Video Conferencing from their residential offices/residences. Also, the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences /offices.)

Appearance :

For the Petitioner/s : Mr.Madan Mohan, Adv
For the Respondent/s : Mr.Vivek Prasad (GP7)

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

Date : 14-09-2021

Heard learned counsel for the parties.

Petitioner has prayed for following relief:-

“For issuance of writ in the nature of mandamus directing to release the EON Car of Hyundai Company bearing registration no. BR 01 T 8348 having Chassis no. MALA251ALFM406174F, Engine number G3HAFM366761 belonging to petitioner no. 2 and one

Laptop of Dell Company belonging to petitioner no. 3 and One Plus Nord 5G mobile phone belonging to Petitioner No. 1 seized in connection of Industrial Area Bhagalpur PS Case No. 77/2021, registered under sections 30(a) of Bihar Prohibition and Excise Act, 2018.”

Learned counsel for the **petitioner no. 2** submits that **petitioner no. 2** is the owner of the vehicle in question and 375 ml of illicit liquor was recovered from the back seat of the aforesaid car. It is further submitted by learned counsel for the petitioner no. 2 that no confiscation proceeding has been initiated as yet and statement in this regard has been made in para-8 of his petition.

Learned counsel for the State submits that as there is recovery of illicit liquor from the aforesaid car, same is liable for confiscation.

In view of the above, the writ petition is disposed of with a direction to the **Confiscating Authority/District Magistrate, Patna**, to immediately initiate the confiscation proceeding, if not already initiated, preferably within 15 days from the date of production/receipt of a copy of the order passed by this Court and conclude the confiscation proceeding within 90 days, from the date of filing of show cause failing which, he is directed to provisionally release the vehicle of **petitioner no. 2** after due identification of ownership 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 no. 2** while submitting the sureties shall also furnish the following affidavits/undertakings:

(i) That the **petitioner no. 2** 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 no. 2** 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 no. 2** and same shall be kept on record so that in future if so required, it may be used as a secondary evidence. The **petitioner no. 2** 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.

So far as Laptop of Dell Company (owner is petitioner no. 3) and One Plus Nord 5G mobile (owner is petitioner-1) are concerned, as recovered and seized Laptop and Mobile are not

liable for confiscation under section 56 of the Excise Act, bar of jurisdiction in confiscation under section 60 of the Excise Act is not applicable and the concerned Special Court (Excise) has jurisdiction to pass order for release of cash during pendency of trial.

The writ petition is disposed of with liberty to **petitioner nos. 1 and 3** to file a petition before the Special Court (Excise) under section 451 of Cr.P.C., and if any such petition is filed for release of seized Laptop and Mobile, the Special Court (Excise) shall dispose of such petition within 30 days from its filing.

(Sanjay Karol, CJ)

(S. Kumar, J)

ranjan/-

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