

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17624 of 2021

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Kiran Devi Dalmia W/o Late Shiv Sankar Prasad Dalmia R/o Vill Pipra
Damodharpur P.S. Pipra Dist East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Departemnt of Excise and Prohibition, Govt. of Bihar.
2. The District Magistrate Muzaffarpur.
3. The Police Superintendent Muzaffarpur.
4. The S.H.O. Sakara Dist.-Muzaffarpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Dhannjay Kumar No 2
For the Respondent/s : AC to AG

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 10-12-2021

Heard learned counsel for the parties.

Petitioner has prayed for following relief(s):-

“(i) For issuance of an appropriate writ in nature of Mandamus direction the respondents to release the vehicle (Mahindra & Mahindra Limited/Bolero Pickup Van) of the petitioner bearing registration BR 05GB-3911 Chassis No. MA1ZUZTBKJ1F55430 Engine No. TBJ1F63062 was seized by S.H.O Sakara in connection with Sakara P.S. Case No.722/20 arising out in Confiscation Proceeding 104/Excise 21-22 pending before Respondent

no. 2 registered u/s 414, 34 of I.P.C. & 30(a), 41, 56(b), 56(D) Bihar Prohibition & Excise Act, 2016.

(ii) For issuance of any other relief/reliefs which may be deem fit and proper by this Hon'ble Court."

It is submitted on behalf of petitioner that petitioner is wife of the owner of the seized vehicle and her husband died and seized Bolero pickup van was looted on the strength of arms by the criminals for which FIR dated 12.09.2019 being Sadar P.S. Case No.637/19 under Section 395 / 397 IPC was instituted and same Bolero pickup van was seized by the police on 25.12.2020 from which 8.64 litre of illicit foreign liquor was recovered. The miscreants had erased the registration number from the Bolero pick up van.

Since seized vehicle was stolen by some miscreants, 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 and confiscation proceeding has been initiated, however, it shall be open for the petitioner to satisfy the confiscating authority that her vehicle was stolen and same was misused by miscreants and petitioner had no knowledge that her stolen vehicle was being

misused by miscreants in transportation of illicit liquor.

In the facts and circumstances of the case, the District Magistrate/Confiscating officer Muzaffarpur is directed to provisionally release the vehicle of petitioner in confiscation case no.104/Excise /21-22, 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 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	
CAV DATE	
Uploading Date	
Transmission Date	