**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**Civil Writ Jurisdiction Case No.794 of 2022**

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Sudhir Kumar S/o Kanhaiya Singh, resident of Village-Baruna, P.S.-Akhorigola, District-Rohtas.

... ... Petitioner/s

Versus

1. The Chief Secretary State of Bihar, Patna.
2. The State of Bihar through the Principal Secretary, Department of Registration, Excise and Prohibition, Government of Bihar.
3. The Excise Commissioner, Bihar, Patna.
4. The Collector-cum-The District Magistrate, Aurangabad.
5. The Superintendent of Police, Aurangabad.

... ... Respondent/s

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**Appearance :**
For the Petitioner/s : Mr.Bhaskar Shankar, Adv
For the Respondent/s : Mr.Kumar Manish (SC5)

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**(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.)**

**CORAM: HONOURABLE THE CHIEF JUSTICE**
**and**
**HONOURABLE MR. JUSTICE S. KUMAR**

**ORAL JUDGMENT**
**(Per: HONOURABLE MR. JUSTICE S. KUMAR )**

**Date : 01-04-2022**

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s):-

> "(I) To issue appropriate writ(s), order (s) direction (s) to set aside the order dated 04.12.2021 passed by Addl. Chief Secretary, Bihar, Patna, in Excise Revision No. 231 of 2021 where by revision has been rejected and affirmed the order of Excise Commissioner and Deputy Collector, Aurangabad and it is also prayed to set aside the order dated 10.09.2021 passed in Excise Appeal No. 524/2021 by the Excise Commissioner, Patna and also set aside the order dated 15.06.2021 passed by Deputy Collector, Aurangabad in Confiscation Case No. 98/2021/78/2020 whereby and where under orders of confiscation of the vehicle registration no. JH10BT-8751

Scorpio has been passed and the said vehicle has been confiscated by the Deputy Collector in exercise of powers under section 58 of Bihar Excise and Prohibition Act, 2016 (hereinafter referred to as 'the Act'.)

(II). To issue an appropriate writ in the nature of mandamus directing the respondent authorities that the vehicle registered through vehicle registration no. JH10BT-8751 be restrained from surrender and auction and the order dated 04.12.2021 passed by Addl. Chief Secretary, State of Bihar, Patna and order dated 10.09.2021 passed by Excise Commissioner and Deputy Collector, Aurangabad may not be enforced until the pendency of the present writ application."

Petitioner claims to be the owner of the seized vehicle.

Allegation is recovery of 760 litre of illicit liquor from the seized vehicle of the petitioner.

It is submitted by learned counsel for the State that during pendency of writ petition, there has been amendment in the Bihar Prohibition and Excise Rules, 2021 and a new Rule 12(A) has been inserted which reads as under:-

**"12. A. Release of Vehicles, Conveyance etc. on payment of Penalty:-** (1) If any vehicles, conveyance, vessel, animal etc. has been seized by any police or excise officer under the Act, then in terms of section -57B(1) of the Act, the Collector or an officer authorized by him upon receipt of an application in Form IV by the owner of the said conveyance or vehicle etc., may release the said conveyance or vehicle upon payment of such penalty as may be ordered by the Collector or the officer authorized by him.

Provided, where it is not possible to ascertain the owner of the vehicle or the owner is not coming to claim the vehicle, the Collector or the officer authorized by him, after waiting for 15 days from the date of seizure, shall proceed to confiscate and auction the vehicle as per the provisions of the Act.

(2) The penalty shall be 50% of the latest insured value of vehicle/conveyance. The insured value is the value of the vehicle as assessed by the insurance company. Where, the insured value is not available or the Collector or the officer authorized by him has reason to believe that the vehicle is undervalued, he shall get the valuation done by the District Transport Officer and 50% of that value shall be the amount of penalty.

In any case, the Collector shall not wait beyond 15 days from the date of seizure and if during this period, the accused/owner does not pay up the penalty, he shall proceed with the confiscation/auction.

(3)Notwithstanding above, if on a report by police officer or excise officer, the Collector or the officer authorized by him is satisfied that releasing the vehicle or conveyance shall not be in the public interest, he shall proceed ahead with the confiscation of the said vehicle or conveyance and its subsequent auction / disposal.

(4) Where the conveyance is such that its valuation / insurance is not possible, the Collector or the officer authorized by him shall impose such fine as he deems fit. While imposing such fine, the Collector or the officer authorized by him shall have due regard to the economic status of the individual, nature of his involvement in the crime and the quantum of intoxicant recovered.

(5) Such penalty shall be, regardless of the outcome of the trial if any, before the Special Court, non-refundable.

(6) The owner of the vehicle / conveyance shall, after the release of the vehicle / conveyance, produce the vehicle/ conveyance as and when required by the authorities.

[Explanation:- **In all pending / ongoing cases of confiscation/auction of vehicles, the Collector or the officer authorized by him may give an opportunity to the existing owner to pay the aforesaid penalty and get the vehicle released. Upon satisfaction about ownership and upon payment of such penalty, the ongoing confiscation/auction proceeding may be dropped and the vehicle released.]"**

In said view of the matter, the writ petition is disposed of with liberty to petitioner to avail the remedy of the amended provision 12(A) of the Bihar Prohibition & Excise (Amendment) Rules, 2022. It is made clear that this Court has not expressed any opinion with respect to merit of case.

Equally, liberty reserved to petitioner to approach this Court for same and subsequent cause of action, if so arises.

**(Sanjay Karol, CJ)**

**(S. Kumar, J)**

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