IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2327 of 2022

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Sakeel Khan @ Sakeel, S/o Hasan Mohammad, Resident of Village-Chhainsa, P.S.-Tahsil-Hathin, District-Palwal (Haryana).

... ... Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Prohibition Excise and Registration Department, Bihar, Patna.
2. The Additional Chief Secretary, Prohibition Excise and Registration Department, Bihar, Patna.
3. The Excise Commissioner, Bihar, Patna.
4. The Sub-Divisional Magistrate-cum-Sub-Divisional Officer, Supaul.
5. The Superintendent of Police, Supaul.
6. The S.H.O., Supaul Police Station Supaul, District-Supaul.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Rama Kant Singh, Advocate
For the Respondent/s	:	Mr.Kumar Manish (S.C. 5)

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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 : 22-04-2022

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s).

I. For quashing of the order vide Memo Excise Revision Case No. 270/2021-07 dated 05.01.2022 issued under the signature of

Respondent no. 2 whereby and whereunder the order of the Sub-Divisional Magistrate has been affirm and the same also the order of the Respondent no.3.

II. For quashing of the order dated 20.09.2021 passed in excise Appeal Case No. 599/2021 by the court of learned Excise Commissioner, Bihar, Patna as well as the order dated 26.11.2020 passed in Confiscation Case No. 128/2020 by the learned court of Sub-Divisional Magistrate, Supaul whereby and whereunder learned Excise Commissioner, Bihar, Patna has affirm the order dated 26.11.2020 passed by the S.D.M., Supaul.

III. For quashing of the order dated 26.11.2020 in Vahan Confiscation Case No. 128/2020 issued under the signature of Sub-Divisional Magistrate-cum-Sub-Divisional Officer, Supaul whereby and whereunder confiscation order has been passed against the petitioner.

IV. And further stay of the latter dated 03.01.2022 which has been issued under the signature of District Magistrate to confiscate the Vahan Container of the petitioner which is at serial no. 184 in that day.

V. And further for issuance of an appropriate direction (s) to the respondents for releasing Vahan container of the petitioner/petitioner which is a Vahan container bearing Registration No. HR-73A-6216 Engine No.-E624CDJM253173 Chasis No.-MC2TIRRFOJL013666 in his favour which has been seized in connection with Suapul (District-Supaul) P.S case no. 598/2020 for the offences punishable under section 30(a) of the Bihar prohibition and Excise Act and for which the said Vahan container the confiscation proceeding has been initiated vide confiscation case no. 128/2020 (The State of Bihar & ors Sakeel Khan & ors) by the competent authority and the authority have finally decided on 26. 11.2020 against the petitioner/petitioner and confiscate the said Vahan but no. any proper notice in this connection has been issued and served to the petitioner till date.

VI. And/Or for any other appropriate reliefs) to the petitioner/petitioner for which he may be found entitled to in the eye of alw.

Petitioner claims to be the owner of the seized vehicle.

Allegation is recovery of 2628 litres 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) as well as 57B have 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.]

57B-Things or premises liable to be released upon penalty-

(1) Any animal, vehicle, vessel or other conveyance used for committing any offence punishable under this Act that has been seized by any police Officer or Excise Officer may be released by the Collector upon payment of such penalty as may be notified by the State Government.

(2) Any premises or part thereof used for committing any offence punishable under this Act that has been seized by any police Officer or Excise Officer may be released by the Collector upon payment of such penalty as may be notified by the State Government.

(3) If the person concerned does not pay the penalty, then

> the Collector shall proceed to confiscate the said animal, vehicle, vessel or other conveyance and premises as per section-58.
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> [Explanation 1: It shall not be a right of the accused to get his conveyance, item or premises released upon payment of the required penalty. The Collector, based upon a report by a police Officer or an Excise Officer, may, for reasons to be recorded in writing, still refuse to release the said conveyance, item or premises and proceed ahead with confiscation and auction/destruction.]
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> [Explanation 2: The Collector shall, from the date of this Amendment coming into force, close the on-going confiscation proceeding if the person concerned pays the penalty as notified and release such vehicle, conveyance or premises.]
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> [Explanation 3: Such release shall not affect the outcome of trial, if any, before the Special Court.]"

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) and 57B 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)

Rajiv/veena-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	