

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3619 of 2022

=====

Mukhtar Ahmad @ Mukhtar Ahmad Ansari Son of Faruk Ansari @ Faruq Ansari, Resident of Village-Basuka, Dildarnaga, P.S.-Zamania, District-Gazipur (Uttar Pradesh)

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secreary, Home Department, Government of Bihar, Patna.
2. The Principal Secrerary, Excise Department, Government of Bihar, Patna.
3. The Director General of Police, Bihar, Patna.
4. The District Magistrate-Cum-Collector, East Champaran at Motihari.
5. The Superintendent of Police, West Champaran at Bettiah
6. The S.H.O. Ramnagar Police Station, District-West Champaran at Bettiah.
7. The Investigating Officer, Ramnagar P.S. Cae no. 396 of 2021, District-West Champaran at Bettiah

... .. Respondent/s

=====

Appearance :

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

=====

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

Date : 25-04-2022

Heard learned counsel for the parties.

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

“i. Releasing the Truck (hereinafter referred as vehicle) bearing Registration No. UP65BT6834, Engine No. 21A84038551, Chassis No. MAT466385C5B03068 seized in connection with

Ramnagar P.S. Case No. 396 of 2021 dated 19.11.2021 registered for offence under Section 30(a)/33 of the Bihar Prohibition & Excise (Amendment) Act, 2016.

ii. To direct the Respondent Authorities to stay the confiscation proceeding.

B. To any other relief/s to which the petitioner is found entitled to.”

Allegation is of recovery of 4200 litres of Spirit from the truck of the petitioner. It is further submitted that confiscation case has been initiated for confiscation of the truck of petitioner.

In said view of the matter, the District Collector/Confiscating authority, East Champaran, Motihari is directed to conclude the confiscation proceeding within 90 days from the date of filing of show cause by the petitioner, if not already filed or within 90 days if the show cause has been filed from the date of receipt/production of a copy of order passed by this Court, failing which, the truck of the petitioner shall be provisionally released till conclusion of confiscating proceeding and possession to be handed over to the petitioner, on furnishing adequate sureties and undertaking to the satisfaction of District Collector / Confiscating Authority, East Champaran at Motihari.

Or

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)

veena/rajiv-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	