IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5367 of 2022

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Karu Singh @ Shyam Sundra Sharma, Son of Naresh Singh @ Naresh Sharma, Resident of Village- Chhotki Dhawa, P.S.- Ekangarsarai, District- Nalanda.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department, Government of Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Excise Commissioner, Bihar, Patna.
4. The Inspector General of Police, Bihar, Patna.
5. The District Magistrate-cum-Collector, Nalanda.
6. The Additional District Magistrate-cum-Additional District Collector, Nalanda.
7. The Superintendent of Police, Nalanda.
8. The Sub-Divisional Officer, Nalanda.
9. The S.H.O., Ekangarsarai Police Station, Nalanda.
10. The Investigating Officer, Ekangarsarai P.S. Case No. 54/2020, Ekangarsarai Police Station, Nalanda.
11. Abhinav Mrinal Son of Awadhesh Kumar Singh Resident of Patel Nagar, Hilsa, P.S.- Hilsa, District- Nalanda.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Anuj Kumar, Advocate
For the Respondent/s	:	Mr.Vivek Prasad (Gp 7)

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

Date : 10-05-2022

Heard learned counsel for the parties.

Petitioner has prayed for following reliefs:-

A. A writ in the nature of CERTIORARI or any other appropriate writ/s, order/s direction/s quashing the following:-

i. The order dated 13.03.2021 passed by the learned Additional District Magistrate – Cum – Additional District Collector, Nalanda (Respondent no. 6) in Confiscation (Excise) Case No. 65 of 2021 (Annexure – 3) whereby and where under he has directed to the Superintendent Excise Prohibition, Nalanda, to take valuation report of Scorpio Vehicle bearing registration no. BR01PK – 7002, which was seized in connection with Ekangarsarai P.S. case no. 54/2020 registered for the offence under section 30(a) of Bihar Prohibition and Excise Act 2018, from the Motor V,ehicle Inspector, Nalanda and sale the vehicle in open market and deposit the collected money into the government treasury.

ii. The order dated 11.01.2022 passed by the Commissioner, Excise, Bihar, Patna (Respondent No. -3) in Excise Appeal Case No. 881 of 2021 (Annexure – 5) whereby and where under he has upheld the order dated 13.03.2021 passed by the learned Additional District Magistrate – Cum – Additional District Collector, Nalanda (Respondent no. 6)

iii. The auction order (Parwana) dated 13.05.2021 passed by S.D.O Hilsa (Nalanda) by which the Vehicle of the

petitioner auctioned to one Abhinav Mrinal (Annexure -)
be stayed.

B. A writ in the nature of MANDAMUS or any other appropriate writ/s, order/s directing the Respondent Authorities the following:-

   i. To release the Scorpio Vehicle bearing Reg. No. BR01PK - 7002 which was seized in connection with Ekangarsarai P.S. case no. 54/2020 registered for the offence under section 30(a) of Bihar Prohibition and Excise Act 2018.

   ii. To hold that the orders/ actions (Annexure – 3 and – 5) of the Respondent Authorities are not tenable in the eye of law and violation of Article 300A of the Constitution of India.

   iii. To hold that the orders / actions (Annexure – 3 & 5) of the Respondent Authorities amounts to double jeopardy.

   iv. To hold that the orders dated 13.03.2021 and 11.01.2022 of the Respondent No. 6 & 3 respectively are null and void.

C. To any other relief/s to which the Petitioner is found entitled to.

Petitioner has approached this Court without availing the statutory remedy of revision against the impugned appellate order, as such, liberty is granted to petitioner to file revision against the appellate order before the Revisional Authority and if any such Revision is filed within 4 weeks, then Revisional Authority shall decide the revision petition preferably within 8 weeks from the date of its filing on its own merit.

During pendency of revision petition, confiscated property / vehicle shall not be auction sold, nor possession of vehicle to be given to auction purchaser.

OR

It is submitted on behalf of 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.
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> 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 view of amendment in the Excise Act, and same being applicable in pending cases, it shall be open for the petitioner to get his/her vehicle released after making payment of penalty in terms of Rule 12(A) inserted by amending Bihar Prohibition and Excise Rules, 2021.

With said observation and direction, this writ petition is disposed of.

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

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.05.2022
Transmission Date	NA