**IN THE HIGH COURT OF JUDICATURE AT PATNA**
**Civil Writ Jurisdiction Case No.6155 of 2022**

======================================================

Subodh Yadav Son of late- Hari Lal Yadav, resident of Village- Kishantoli, P.S.- Mirganj, District- Purnea.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Registration, Excise and Prohibition, Government of Bihar, Patna.
2. The Commissioner, Excise, Government of Bihar, Patna.
3. The District Magistrate-cum- Collector, Purnea.
4. The Superintendent of Police, Purnea.
5. The Superintendent, Excise, Purnea.
6. The Sub- Inspector, Dagarua, Purnea.

... ... Respondent/s

======================================================

**Appearance :**
For the Petitioner/s : Mr. Amit Kumar Anand, Advocate
For the Respondent/s : Mr. Vivek Prasad, GP-7

======================================================

**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 the following relief(s):-

1. That this is an application for setting aside the order dated- 06.07.2021(Annexure-4) passed by the learned Commissioner Excise, Government of Bihar, Patna (Respondent No.2) in connection with Excise Appeal No. 366 of 2021 and also setting aside the order dated- 19.03.2021 (Annexure-3) passed by the learned District Magistrate-cum-Collector, Purnea in Excise Case No. 321 of 2020 whereby and where under the learned District Magistrate-cum-Collector, Purnea (Respondent No. 3) has confiscate the Scorpio Vehicle bearing registration number JH21J/3540,

Engine No. SJF4G12265 and Chassis No. MA1TA2SJXF2G44175 and learned Commissioner Excise, Government of Bihar, Patna was also affirm the order passed by the learned District Magistrate-cum-Collector, Purnea, which have been illegally and deliberately seized by the Sub-Inspector, Dagarua, Purnea, in connection with Special Excise Case No. 279 of 2020 arising out of Dagarua P.S. Case No. 107 of 2020 registered for the offence under section 272 and 273 of the Indian Penal Code and 30(a) of the Bihar Prohibition & Excise Act 2016, it is also prayed that issuance of mandamus directing and commanding the respondent authorities to release the four wheeler Scorpio Vehicle bearing registration number JH21J/3540, Engine No. SJF4G12265 and Chassis No. MA1TA2SJXF2G44175 in favour of the petitioner and the petitioner also prays for any other relief or reliefs for which he is legally entitled too, on the peculiar facts and circumstances stated in this petition.

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

During pendency of revision, the confiscated vehicle/property shall not be auction sold, if not already auction sold.

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) 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.

[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.]

[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.]

[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 get his/her vehicle released in terms of the amended provision 12(A) and 57B of the Bihar Prohibition & Excise (Amendment) Rules, 2021. 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)**

ranjan/-

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