

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6613 of 2022

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Shambhu Nath Lal, S/o Shri Katho Lal, resident of Village-Chutti Bazar, P.S.-
Giridih, District-Giridih, Jharkhand.

... .. Petitioner/s

Versus

1. The State of Bihar through the Additional Chief Secretary, Department of Prohibition and Excise, Vikas Bhawan, Bailey Road, Patna-800001.
2. The Collector-cum-District Magistrate, Jamui.
3. Excise Superintendent, Excise and Prohibition Department, Jamui.
4. The Officer-in-Charge cum Sub-Inspector of Police, Chakai Police Station, District-Jamui.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Navendu Kumar, Adv
For the Respondent/s : Mr.Kumar Manish (SC 5)

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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 the following relief(s):-

That this writ petition is being filed for provisional release of Maruti Swift Car bearing Registration no.- JH11X4275 which has been seized and confiscated in connection with the Chakai P.S. Case no.-129/21 dated 12.07.2021 for the offences under Section 30(a) of the Bihar Prohibition and Excise Act, 2016 and Sections 272 and 273 of the Indian Penal Code, 1860.

It is submitted by learned counsel for the petitioner that against the order of confiscation and appeal, petitioner has filed Revision before the Revisional Authority which is still pending.

In view of the above, the writ petition is disposed of with a direction to the Revisional Authority to decide the Revision Application filed by the petitioner within 15 days from the date of production/receipt of a copy of the order passed by this Court.

During pendency of Revision application the vehicle 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) 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 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 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.

(Sanjay Karol, CJ)

(S. Kumar, J)

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AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	