

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6619 of 2022

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Rajesh Kumar Mehra Son of Sri Sukal Mehra, Resident of Village-
Mahadeopur Patraha, Burhiya Gola, P.S.-Sarsi, 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, Sarsi, Purnea.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Amit Kumar Anand, Adv
For the Respondent/s : Mr.Vikash Kumar (SC11)

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

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- 15.03.2022(Annexure-4) passed by the learned Commissioner Excise, Government of Bihar, Patna (Respondent No.2) in connection with Excise Appeal No. 155 of 2022 and also setting aside the order dated- 14.01.2022 (Annexure-3) passed by the learned District Magistrate-cum-Collector, Purnea in Excise Case No. 466 of 2021 whereby and where under the learned District Magistrate-cum-Collector, Purnea (Respondent No. 3) has confiscate the Scorpio Vehicle bearing registration number BR-11PC/5391/3540, Engine No. XMM4A15198 and Chassis No. MA1TA2XM2M2A17648, the 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, Sarsi, Purnea, in connection with Pre Trial No. 450 of 2021 arising out of Sarsi P.S. Case No. 115 of 2021 registered for the offence under section 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 BR-11PC/5391/3540, Engine No. XMM4A15198 and Chassis No. MA1TA2XM2M2A17648 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(B) and 57(B) have been inserted which reads as under:-

"12B. Release of Premises on Payment of Penalty: - (1) If any premises or part thereof has been seized or sealed by any police or excise officer under the Act, then in terms of section-57B (2) of the Act, the Collector or an officer authorized by him, upon receipt of an application in Form V from the owner of the said premises, may release or unseal the said premises or part thereof 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 premises or the owner is not coming forward, the Collector or the officer authorized by him shall, after waiting for 15 days from the date of seizure/sealing, proceed to confiscate the premises as per the provisions of the Act.

(2) 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, location of the premises and the quantum of intoxicant recovered while deciding the quantum of fine to be paid by the individual. However, the fine shall not be less than Rs. one Lakh in any case. In any case, the Collector shall not wait beyond 15 days from the date of seizure/sealing 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 premises shall not be in the public interest, the Collector or the officer authorized by him shall proceed ahead with the confiscation of the said premises or part thereof and its subsequent auction/disposal.

(4) Such penalty shall be, regardless of the outcome of the trial if any, before the Special Court, non-refundable.

(5) The owner of the Premises shall, after the release of the premises, allow the inspection of the premises as and when desired by the authorities.

[Explanation: In all pending/ongoing cases of confiscation/ auction of premises, the Collector or the officer authorized by him may give an opportunity to the existing owner to pay the aforesaid penalty and get the premises released. Upon satisfaction of ownership and upon payment of such penalty, the ongoing confiscation/auction proceeding may be dropped and the premises 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 ongoing 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 view of amendment in the Excise Act, and same

being applicable in pending case, it shall be open for the petitioner to get his/her vehicle released in terms of Rule 12(B) and 57(B) inserted by amending Bihar Prohibition and Excise Rules, 2021.

With aforesaid observation and direction, the writ petition stands disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

ranjan/-

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