

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.11478 of 2022

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Ranjit Khalifa Son of Vijay Khalifa, Resident of Village- Harseni, P.S.-
Ishlampur, District – Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary Excise Registration and Prohibition Government of Bihar, Patna.
2. The District Magistrate, Banka.
3. The Superintendent of Police Banka.
4. The S.H.O. of Baushi P.S. Banka.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ajay Kumar Sinha, Advocate
For the Respondent/s : Mr.Kumar Manish (SC5)

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

**(The proceedings of the Court are being conducted through
Video Conferencing and the Advocates joined the proceedings
through Video Conferencing from their residence.)**

Date : 12-08-2022

Heard learned counsel for the parties.

Petitioner has prayed for following relief:-

1. That writ application is being
filed for issuance of the writ appropriate
in nature for quashing the order dated

09.07.2022 passed by Additional Chief Secretary Bihar, Patna in Excise Revision Case No. 169/2022 arising out of order dated 10.09.2021 passed by the Collector Banka in Excise Confiscation case no. 533/2021-22 which arises out of P.R. Case No. 74/2021 of P.S. Baushi registered u/s 30(a) of Bihar Prohibition Amendment Excise Act 2018 that was modified by the Excise Commissioner Bihar Patna vide order dated 24.05.2022 passed in Excise Appeal No. 314/2022 whereby and where under the seized vehicle Registration No. BR01PA6799 was ordered to be released in favour of the petitioner after the deposit of 50% of Insurance value amount of the seized Sumo Victa Registration No. BR01AP6799, Chassis No. MAT44624799N28599, Engine No. 483DL51N02716713.

Informant, who is a police officer, has alleged that on 04.07.2021, while he along with other police personnel was checking the vehicle at main road Hansdiha- Bhagalpur, near Shyama Bazar, one Sumo Victa vehicle was seen coming which

was stopped and on search, 87.84 litres of illicit foreign liquor was recovered from the said vehicle, however, driver of the said vehicle managed to flee away.

It is submitted by learned counsel for the petitioner that petitioner is owner of the seized vehicle having all legal papers standing in his name. It is further submitted that said vehicle was stolen by unknown miscreants for which petitioner had instituted an FIR dated 28.06.2021 in connection with Islampur P.S. Case No.337/2021 registered under Section 379 of the IPC (Annexure-3). Even the supervising authority had supervised the case on 10.07.2021 and has found the case to be true.

It is further submitted that petitioner was summoned in Confiscation Case No.533/21-22 on 11.08.2021 and then he came to know about the seizure of the alleged vehicle and thereafter he filed a detailed show cause for release of the seized vehicle, annexing the ownership papers and a copy of Islampur P.S. Case No.337/2021.

Thereafter, the District Magistrate, Banka had also sought an information from Islampur P.S. regarding the theft of the seized vehicle which was provided by the S.I. of Islampur Police Station on 22.08.2021. However, the District Magistrate, Banka rejected his application vide order dated 10.09.2021 and

vehicle was directed to be confiscated, against which, he preferred an appeal before the Excise Commissioner, Patna, who vide order dated 24.05.2022 modified the order dated 10.09.2021 of the District Magistrate, Banka to the extent that the seized vehicle be released in favour of the petitioner if 50% of the insurance value of the seized vehicle is deposited by the petitioner. Thereafter, petitioner also preferred a revision against the said order before the Principal Secretary, Excise Department, Government of Bihar which was heard by Additional Chief Secretary, Bihar, Patna and who, vide order dated 09.07.2022 affirmed the order passed by the Excise Commissioner, Patna and rejected the revision application filed by the petitioner. Hence this writ.

It is submitted by learned counsel for the petitioner that aforesaid vehicle was stolen by unknown thieves for which petitioner had instituted an FIR dated 28.06.2021 and his stolen vehicle was misused by miscreants for transporting illicit liquor which was seized by police on 04.07.2021 as such he is not responsible of being indulged in carrying/transporting illicit liquor in his vehicle.

The original authority, appellate authority as well as revisional authority did not consider this fact and had passed

cryptic orders which are not tenable under law.

Under Section 13(b) of Bihar Prohibition and Excise Rules, 2021, the confiscating authority has to pass appropriate order with respect to seized vehicle or vessel or conveyance as the case may be after considering the show cause filed by the owner of the vehicle and providing reasonable opportunity to both sides and provision does not contemplate that in all cases where illicit liquor has been recovered from the vehicle, the vehicle has to be confiscated rather Rule contemplates passing of appropriate order by the confiscating authority taking into account fact and circumstances of each case.

In view of above, the order dated 09.07.2022 passed by the Additional Chief Secretary, Bihar, Patna in Excise Revision Case No.169/2022, order dated 24.05.2022 passed by Excise Commissioner, Bihar, Patna in Excise Appeal No.314/2022 and order dated 10.09.2021 passed by the Collector, Banka in Excise Confiscation Case No.533/2021-22 are quashed and set aside, and matter is remanded back to the original authority, i.e., District Magistrate/Confiscating Authority, Banka to hear it afresh and pass a judicious order in accordance with law considering the show cause/defence of petitioner as well as materials available on record.

Meanwhile, the District Magistrate-cum-Confiscating officer is directed to provisionally release the vehicle of petitioner after due identification of ownership of the vehicle on production of ownership and registration papers with respect to vehicle in question upon furnishing adequate sureties to the satisfaction of the District Magistrate/Confiscating Officer, Banka.

The release shall be allowed within a period of 14 days from the date of submission of the sureties.

With said observations, this writ petition is disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.09.2022
Transmission Date	NA