

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13391 of 2022

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Devendra Kumar S/o Brahamdev Singh, Resident of Village- Mouhabbatpur
Panhesa, P.S. Shekhopur Sarai, District Sheikhpura.

... .. Petitioner/s

Versus

1. The State of Bihar Bihar
2. The District Magistrate, Lakhisrai.
3. The Superintendent of Police, Lakhisarai.
4. The Excise Superintendent, Lakhisarai.
5. The Officer-in-Charge Police Station Tetarhat, District- Lakhisarai.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ranvijay Singh, Advocate
For the Respondent/s : Mr.Kumar Manish (S.C. 5)

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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 : 09-09-2022

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s):-

- (i) For issuance of an appropriate writ in the nature of certiorari for setting aside the order dated 22.3.2022 passed by the learned Additional Session Judge Cum - Exclusive Special Judge -2 Excise Act Lakhisarai passed in Tetarhat P.S. Case No. 5/2022 Whereby and where under learned Judge has been pleased to reject the application filed on behalf of petitioner for release of his truck bearing registration No. BR-27G-5748 which has been seized in Tetarhat P.S. Case No. 5/2022
- (ii) For issuance of an appropriate writ in the nature of MANDAMUS Commanding and directing the respondent authority to release the truck of petitioner bearing Registration No. BR27G 5748 which has been seized in

Tetarhat P.S. Case No. 05/2022
attributing offences Under Section
279 , 379/411 of I.P.C. and Section
37 of Bihar Prohibition and Excise
Amendment Act 2018 and Section 56 of
Bihar Mineral Consession prevention of
illegal mining Transportation and
Storage Rule 2021 and Section 21
M.M. (D and B) Act 1957.

(iii) Further for issuance of any other
writ/ writs, order /orders,
direction/ directions for which
petitioner shall be found entitled
Under the facts and circumstances of
the case as stated herein below for
he equitable Justice. .

Informant, who is a police officer, has alleged that
on 13.01.2022 at about 9:30 P.M while he along with other
police personnel was checking the vehicle, one truck was seen

coming which was stopped and on inquiry the driver told that the truck is loaded with stone chips for which a chalan was demanded but he did not produce any chalan and driver was also found in a drunken condition and thereafter he was arrested on the spot.

It is submitted that the petitioner is owner of the seized vehicle.

It is submitted that the truck of the petitioner has been seized with allegation of illegal mining of stone chips and for which there is provision of imposing penalty and respondent- Mines Development Officer, Lakhisarai has already imposed a fine of Rs. 2,85,212/- vide letter no. 268 dated 23 of 2022. It is further submitted that petitioner is ready and willing to deposit the fine, as imposed by the authority concerned and no illegal liquor has been recovered from the truck therefore truck in question should be released in favour of the petitioner.

As there is no allegation of recovery of any illicit liquor from the seized vehicle, same is not liable for confiscation under section 56 of the Bihar Prohibition & Excise Act, 2016 as such, bar of jurisdiction in confiscation under section 60 of the Excise Act is not applicable and the concerned Special Court (Excise) where the criminal case is pending has

jurisdiction to pass order for release of seized vehicle.

Writ petition is disposed of with liberty to petitioner who is owner of the seized vehicle to file an application under Section 451 of Cr.P.C for release of his seized vehicle in the concerned Special Court (Excise) who shall dispose of such petition within 30 days from the date of its filing.

(Sanjay Karol, CJ)

veena/rajiv-

(S. Kumar, J)

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	