IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20869 of 2021

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Habib Miya Son of Sabjaan Miya, Resident of Village - Bhagwanpur Piprahi Ward No. - 1, P.S. Riga, District - Sitamarhi.

... ... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Registration, Excise and Prohibition department, Government of Bihar, Patna.
2. The Additional Chief Secretary, Registration, Excise and Prohibition department, Government of Bihar, Patna.
3. The Excise Commissioner, Bihar, Patna.
4. The Excise Commissioner, Tirhut Division, Muzaffarpur.
5. The Collector/District Magistrate- Sitamarhi, District -Sitamarhi.
6. The Superintendent of Police Sitamarhi.
7. The Superintendent of Excise, Sitamarhi.
8. The Circle Officer, Dumra, District - Sitamarhi.
9. The S.H.O. Sitamarhi Police Station, District - Sitamarhi.

... ... Respondent/s

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Appearance :
For the Petitioner/s : Mr.Uday Kumar, Advocate
For the Respondent/s : Mr.Vivek Prasad (G.P. 7)

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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 : 01-04-2022

Heard learned counsel for the parties.

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

> "I. For issuance of an appropriate writ/writs/order/orders/direction/directions including a writ preferably in the nature of

CERTIORARI for quashing the order dated 14.09.2021 passed by the learned Additional Chief Secretary Bihar, Patna in Excise Revision Case No. 129 of 2021 which has preferred against the order dated 18.06.2021 passed by the learned Excise Commissioner, Bihar, Patna in Excise Appeal Case No. 310 of 2021 the said appeal has preferred against the order dated 11.01.2019 passed in Excise Confiscation Case No. 116 of 2020 by the Sun-Divisional Officer, Sitamarhi purported exercise of power conferred under Section 58 of the Bihar Prohibition and Excise Act, 2016 he has ordered to confiscate the petitioner's Hyundai Grand I 10 Car bearing registration No. BR-06BW/3534 having found fit and suitable under Section 56 (b) of the Act.

II. To issue an appropriate order/s, direction/s including a writ preferably in the nature of Mandamus commanding and directing upon the respondent District Magistrate, Sitamarhi to provisionally release the Hyundai Grand I 10 Car bearing registration No. BR-06BW/3534 in favour of petitioner till disposal of criminal case hence forth taking into consideration that nothing incriminating article has been recovered from the vehicle and vehicle has not used in committing the offence under provision of Excise Act, 2016.

III. To any other relief/s to which the petitioner is entitled in the facts and circumstances of the case."

Petitioner claims to be the owner of the seized vehicle.

Allegation is recovery of 1.5 litres of illicit liquor from the seized vehicle of the petitioner.

It is further submitted that a meagre quantity of 1.5 litres of liquor has been recovered from the vehicle, as such, it cannot be construed that the vehicle was used for transporting/carrying illicit liquor.

It is submitted on behalf of 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.
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> 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.
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> (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.
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> 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 said view of the matter, the writ petition is disposed of with liberty to petitioner to avail the remedy of the amended provision 12(A) of the Bihar Prohibition & Excise (Amendment) Rules, 2022. 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.

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

(Sanjay Karol, CJ)

(S. Kumar, J)

veena/rajiv-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	