

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21076 of 2021

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Akhilesh Upadhyay S/o Kripashankar Upadhyay R/o Ward No. 1, 3-D-121,
Obra Colony, P.S. Obra, District- Sonbhadra, U.P.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Registration and Excise, Bihar, Patna.
2. The Commissioner, Department of Registration and Excise, Govt. of Bihar, Patna.
3. The District Magistrate, District- Kaimur at Bhabhua.
4. The Superintendent of Police, District- Kaimur at Bhabhua.
5. The SHO, of Chand Police Station, District Kaimur at Bhabhua.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Jitendra Kumar Giri, Advocate
For the Respondent/s : Mr.Lalit Kishore (A.G.)

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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

Learned counsel for the petitioner submitted that due to inadvertence, registration number, chassis number, and engine number of the vehicle in question has wrongly been mentioned in the petition. He has filed a supplementary affidavit giving correct numbers of the same i.e. Registration Number UP16-AK-7480, Engine Number-D13A1925212, Chassis Number-MA3FLEB1SOO125597.

Heard learned counsel for the parties.

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

“That this is the writ petition being filed before this Hon’ble High Court on behalf of the aforesaid petitioner for issuance of a writ in the nature of ‘Mandamus’ commanding and directing the State respondents to release the vehicle branded as Maruti Ertiga DDIS, bearing Registration No.JH01DU-6157, Chassis No. MA3BNC52SLA213852, Engine No. E15AN10383311 in favour of the petitioner who is the real/rightful owner of the aforesaid vehicle which was seized in connection with Chand P.S. Case No. 231/2021 registered for the offences punishable under Section 30(a)/37(1)(2) of the Bihar Prohibition and Excise Amendment Act, 2018 and the aforesaid vehicle is still lying in the open campus of Chand Police Station without initiation of confiscation proceedings by the Collector of District Kaimur at Bhabua.”

Petitioner claims to be the owner of the seized car and It is submitted that only 540 ml. illicit liquor was recovered and petitioner was not aware that said illicit liquor was kept in his car.

It is further submitted that a meagre quantity of 540 ml. has been recovered from the vehicle, as such, it cannot be construed that the vehicle was used for transporting/carrying illicit liquor.

In the facts and circumstances of the case, concerned District Magistrate/Confiscating Authority 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 in his name with two sureties (one local) to the extent of the value of the vehicle as indicated in the insurance document.

The petitioner while submitting the sureties shall also furnish the following affidavits/undertakings:

- (i) That the petitioner shall not indulge in creating any third party right or interest in respect of the vehicle during the pendency of the confiscation proceeding and shall not alienate the vehicle during this period.
- (ii) The petitioner shall furnish an undertaking to produce the vehicle before the confiscating authority as and when required.
- (iii) Prior to release of the vehicle, a Panchanama would be prepared wherein the photograph of the vehicle shall be taken and will be certified by the petitioner and same shall be kept on record so that in future if so required, it may be used as a secondary evidence. The petitioner shall furnish an undertaking not to challenge the said Panchanama.

The release shall be allowed within a period of 14 days from the date of submission of the sureties and the undertakings as stated above, which would however be subject to finalization of the confiscation proceeding.

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 after making payment of penalty in terms of Rule 12(A) inserted by amending Bihar Prohibition and Excise Rules, 2021.

With said observations, this writ petition is disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

veena/rajiv-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	