

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21255 of 2021

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Sujit Kumar son of Sri Shiv Mahto, resident of Village-Mataiya Madhopur,
P.S. Vaishali, District-Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar through the Commissioner, Department of Prohibition
and Excise, Government of Bihar, Patna.
2. The Collector, Vaishali at Hajipur.
3. The Superintendent of Police, Vaishali at Hajipur.
4. The Senior Deputy Collector, Vaishali at Hajipur.
5. The Sub Divisional Police Officer, Vaishali Sadar, Vaishali.
6. The Officer-in-Charge, Vaishali Sadar P.S., Vaishali.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Rajesh Mohan
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 MR. JUSTICE S. KUMAR)

Date : 22-04-2022

Heard learned counsel for the parties.

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

1. That the present writ petition is being filed on behalf on the petitioner for issuance of a writ/writs in the nature of a writ of Certiorari to set aside the order dated 14.09.2021 passed in Excise Appeal Case No. 456/2021, whereby and where under the order dated 15.03.2021 passed in Cri. Miscellaneous Case no. 19/2020-21 by the Senior Deputy Collector Vaishali ordering for confiscation of the Mahendra Bolero Pick up Van of the petitioner has been affirmed and for a direction to command the respondents to release the Bolero Pick-up Van of the petitioner bearing Registration No. BR-06-GE-2355, which was seized in connection with Vaishali Police Station Case No. 312/2020 dated 20.09.2020, instituted under section 30(a) & 41(1) of the Bihar Prohibition and Excise Act, 2016 and for further order/orders, relief/reliefs for which in the facts and circumstances of the case the Petitioner may entitled to.

Petitioner has approached this Court without exhausting the statutory remedy of appeal against the impugned order, as such, petitioner is granted liberty to avail the remedy of appeal against the confiscation order passed by the Confiscating Authority- cum- District Magistrate, before the Appellate Authority and if any such appeal is filed within 4 weeks then appellate authority shall condone the delay in filing the appeal

and shall decide the appeal on its own merit preferably within 8 weeks from the date of its filing.

During pendency of appeal, 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(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.

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.

(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.

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

With said observation and direction, this writ petition is disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

ranjan/-

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