

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.222 of 2022

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Kamlesh Chaudhari, Son of Late Jugeshwar Chaudhry @ Kishun Chaudhry
Resident of Sabarchak, P.S.- Naubatpur, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Excise Department, Govt. of Bihar, Patna.
2. The District Magistrate, Patna
3. The Additional District Magistrate, Patna
4. The Superintendent of Police, Patna
5. The Station House Officer, Janipur, District- Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Santosh Kumar, Advocate, Advocate
For the Respondent/s : Mr.Vivek Prasad (GP7)

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

Date : 09-05-2022

Heard learned counsel for the parties.

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

“i. Issuance of an appropriate writ in the nature of Mandamus directing the authority to release the petitioner’s Motorcycle having registration no.-BRO1DF5693 in connection with P.R. Janipur, P.S. Case 93/2021 registered u/s 30(a)/32(1)/32(3)/41(1)/42(2) of Bihar Prohibition and Excise Amendment Act, 2018.

ii. Issuance of writ in the nature of Certiorari, setting aside the action of illegally seizing the Motorcycle of the petitioner by the police. The District Magistrate, Patna had not confiscated the vehicle of the petitioner.

iii. Issuance of writ in the nature of



Certiorari holding that the District Magistrate, Patna does not have jurisdiction to initiate and hold that the vehicle of the petitioner is subject matter to confiscation under the Bihar Prohibition and Excise Act, 2016 while the criminal case is pending before the judicial forum.

iv. Issuance of an appropriate writ/writs order/orders, direction/directions holding that the executive authorities have no power to seized the vehicle or exercise powers of confiscation.

v. Any other relief or reliefs to which the petitioner is found entitled in the facts and circumstances of the case.”

Allegation is recovery of 70 litres of toddy kept in two bags loaded on the motorcycle in question driven by the petitioner.

Petitioner claims to be the owner of the seized vehicle.

In the facts and circumstances of the case, **the District Magistrate/Confiscating Officer concerned** is directed to provisionally release the vehicle of petitioner after due identification of ownership of the vehicle seized by the police in excise case 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.

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 said view of the matter, the writ petition is disposed of with liberty to petitioner to avail the remedy of the amended provision of 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 the case.

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

(Sanjay Karol, CJ)

(S. Kumar, J)

Ashwini/Sujit

AFR/NAFR	
CAV DATE	
Uploading Date	16.05.2022
Transmission Date	

