

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3741 of 2023

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Ajay Kumar Mehta Son of Late Ramchandra Prasad Mehta Gram- Gewal
Bigaha, thana- Rampur, Zila- Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through Apar Mukhya Sachiv, Madh Nishedh Utpaad and Nibandhan Vibhag, Bihar, Patna.
2. Zila Padadhikari, Patna.
3. Grih Sachiv, Bihar Sarkar, Patna.
4. Police Mahanrideshak, Bihar, Patna.
5. Police Mahanirikshak, Patna Prakshetra, Patna.
6. Variya Police Adhikshak, Patna.
7. Thanaadhayaksh Pandarak, Barh, Patna.
8. Pravin Kumar Singh, Police Avar Nirikshak, Thanaadhayaksh, Pandarak, Patna.
9. Mahaprabhandhak, Utpaad Rasayan Parikshak Karyalay Parisar, Sandalpur Road, Kumharar, Patna- 800006.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Indradeo Prasad, Advocate
For the Respondent/s : Mr. Vivek Prasad, GP-7

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE PARTHA SARTHY

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 04-07-2023

The question agitated by the petitioner herein is that of the legality of the confiscation of a vehicle owned by the petitioner under the Bihar Prohibition and Excise Act. The brief facts to be stated is that on 08.06.2022, the petitioner's car having registration no. BR-02-BD-6678 was seized pursuant to recovery of 750 ml. of foreign liquor. The vehicle was searched



and on detection of the foreign liquor, the vehicle was seized and a confiscation case no. 2255 of 2022-23 was registered. The petitioner claimed that the car was given to his brother-in-law for attending a marriage ceremony, the invitation card of which is produced as Annexure-1. It is also stated that the person in possession of the vehicle has said that he was forcibly taken into custody after planting the foreign liquor in the vehicle and the vehicle seized; illegally.

2. An F.I.R. being no. 74 of 2022 in connection with Pandarak P.S. Case was registered under section 30(A) of Bihar Prohibition and Excise Act. As per the F.I.R., on 08.06.2022 at about 10:00 p.m. a constable of the armed forces along with two others while patrolling found a blue coloured four wheeler Hyundai SX Venue vehicle parked near the Pandarak railway station. At about 00:30 a.m. on 09.06.2022 they reached near the said vehicle which bore the registration no. BR-02-BD-6678 upon which the driver of the car attempted to start the car and flee, however, the car was detained and arrested. The driver, disclosed his name as Pushpendra Kumar, son of Ramdin Prasad. The said person admitted to be the brother-in-law of the petitioner, the owner of the vehicle. The petitioner also admits to the relationship and the vehicle having



been entrusted to his brother-in-law. A bottle of Imperial Blue filled with 750ml. foreign liquor manufactured in New Delhi was recovered from the rear seat of the car, hidden under a bed-sheet. A seizure list was prepared and handed over to the petitioner but, however, no independent witness was available due to the late hours in which the search and recovery was carried out. The F.I.R. also is produced as Annexure-2. The petitioner contends that the confiscation proceeding has not proceeded, despite an order of the Special Excise Court as produced at Annexure-5. The petitioner claims that the matter is still pending before the 2nd respondent-the District Collector, Patna and the vehicle is kept open to sun and rain, thus causing irreparable damage to the petitioner.

3. The learned counsel for the petitioner, while arguing the matter after putting forth the facts, also produced a judgment in C.W.J.C. No. 780 of 2022, a writ petition filed on the very same subject-matter which directed consideration of the case of the petitioner on the principle stated in **Umesh Sah vs. State of Bihar**, reported in **2020 (3) PLJR 931**; a decision of another Division Bench of this Court. The petitioner approached the Exclusive Special Judge, Excise, Barh, Patna in which a direction was issued to the Investigating Officer which has not



been complied with till date. It is pointed out that a representation was made as per Annexure-6 on 20.12.2022 and despite a notice dated 05.12.2022, there were no proceeding taken for confiscation of the vehicle, which notice is produced as Annexure-7. Annexure-7 was also replied to by Annexure-8 is the contention.

4. Learned Government Pleader on instruction submits that the confiscation proceedings will be initiated and concluded and the petitioner could also avail of the remedy of release under Rule 12A.

5. Looking at the decision at the first instance, we find that Umesh Sah (supra) was only with respect to provisional orders to be issued and there was no binding declaration since the reference was to the “continued practice of this Court” in cases of drunken driving, no recovery from vehicle, recovery of less than commercial quantity, *ex facie* proof of no liability to confiscation; where there is inordinate delay in initiating proceedings for confiscation and so on and so forth. It was noticed that the continued practice of this Court was to allow provisional release of the vehicle/property subject to initiation/conclusion/finalisation of the confiscatory proceedings as the case may be.



6. We cannot countenance the argument raised by the learned counsel for the petitioner that there was a planting of contraband in the vehicle for arresting the person, who was in possession of the vehicle and seizing the vehicle as such. It is very pertinent that though the petitioner asserted the same in the writ petition as also before the Exclusive Special Judge, Excise, Barh, the learned Special Judge noticed in his order at Annexure-5 that in the bail application dated 10.06.2022 filed by the accused, it is stated that the accused was guarding the seized car and he was unaware of the fact that the wine was kept in the back seat of the car, covered with a towel. The contrary stand as taken by the accused, who was in possession of the car, demolishes the case set up by the petitioner, the owner of the car.

7. We are hence not inclined to interfere with the seizure of the vehicle as of now. We direct the petitioner to approach the District Collector within a period of one month with an objection or an application under Rule 12A. The District Collector in any event will conclude confiscation proceedings within two months from today. If the petitioner appears as directed herein he shall be heard and if not notice shall be issued to him and the proceedings shall be completed within a period



of two months thereafter. Needless to say that if an application under Rule 12A is filed the same shall be considered on the basis of the amendment as on 31.05.2023; wherein release is to be allowed, at the discretion of the District Collector, imposing a fine, the minimum of which is 10% of the insured value of the vehicle. We hasten to add that if confiscation/release under Rule 12A is not effected within the time prescribed herein; then the petitioner will be entitled to seek for provisional release on proper security being furnished.

(K. Vinod Chandran, CJ)

(Partha Sarthy, J)

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AFR/NAFR	
CAV DATE	N.A.
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