

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.468 of 2023

Arising Out of PS. Case No.-271 Year-2022 Thana- BARUN District- Aurangabad

VIKASH KUMAR SINGH SON OF SIDDHESWAR SINGH R/O VILL.-
PETHARI, P.S.- JAMHORE, DISTT.,- AURANGABAD

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR, THROUGH ITS PRINCIPAL SECRETARY,
DEPT. OF REGISTRATION AND EXCISE OF BIHAR PATNA, BIHAR
2. THE DISTRICT MAGISTRATE, AURANGABAD BIHAR
3. THE SENIOR SUPERINTENDENT OF POLICE, AURANGABAD
BIHAR
4. THE POLICE STATION OFFICER BARUN, AURANGABAD BIHAR
5. THE SUPERINTENDENT PROHIBITION, AURANGABAD BIHAR

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Santosh Kumar Pandey
For the Respondent/s : Mr.Vivek Prasad

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

3 12-09-2023 The present writ application has been filed for quashing the order, dated 20.01.2023, passed by the learned Special Judge, Excise Court No. 1, Aurangabad, in Barun Police Station Case No. 271 of 2022, registered for the offences punishable under Sections 342/343 of the Indian Penal Code, 1860 and Section 30 (a) of the Bihar Prohibition and Excise Act, 2016, whereby the learned Special Judge, Excise Court No. 1, Aurangabad, has rejected the prayer of the petitioner for release of (i) Hyundai Venue 1.4 CRDI MT SX car, having registration no. BR 24Z/7650 (ii) TVS Apache RTR 180 motorcycle,



bearing registration no. BR 26J/1876 (iii) Samsung Mobile B31SE and (iv) Vivo Y50 mobile, in his favour, on the ground of maintainability of the prayer of the petitioner under Sections 56, 57 and 58 of the Bihar Prohibition and Excise Act, 2016.

2. The brief facts giving rise to the present writ application is that First Information Report was lodged by the Station House Officer, Barun Police Station, alleging therein that on the information that one person has been apprehended by some persons, the informant, on the basis of tower location of the mobile, reached the house of the petitioner and saw that the petitioner, along with three other co-accused persons, have apprehended co-accused Sanjay Ram, who disclosed the police that all of them were engaged in the business of illicit liquor and due to non-payment of back dues, the four accused persons, including the petitioner, have apprehended him and are putting pressure upon him to bring the consignment of illicit liquor. After arresting all the five accused persons, the police also seized the vehicles, mobile phones and other documents from the possessions of the accused persons.

3. Learned counsel for the petitioner submits that the petitioner is the owner of the vehicles and mobile phones, mentioned above. He further submits that the petitioners was not



found in drunken condition, nor any illicit liquor was recovered from the conscious possession of the petitioner and/or vehicles/premises belonging to the petitioner, and only on the basis of the statement of co-accused Sanjay Ram that they are engaged in the business of illicit liquor, the present First Information Report has been lodged.

4. Learned Counsel submits that from perusal of the First Information Report and the seizure list, it would be apparent that neither the accused persons were found in drunken condition nor illicit liquor has been recovered either from their conscious possession and/or vehicles/premises belonging to them.

5. Learned Counsel further submits that no confiscation proceeding has been initiated as yet and this fact is evident from the communication made by Senior Deputy Collector -cum- Presiding Officer, Excise, Aurangabad, to the Special Judge, Excise, Aurangabad, (Annexure-5), wherein it is stated that the Superintendent of Police, Aurangabad, vide letter no. 3739, dated 17.11.2022, has recommended not to initiate any confiscation proceeding regarding the seized vehicles and mobile phones, since no illicit liquor has been recovered.

6. Learned Counsel for the petitioner has placed



reliance on the decisions of Division Bench of this Court, in the case of **Diwakar Kumar Singh v. The State of Bihar and Others**, reported in **2018 (3) PLJR 403** and order passed by learned Single Judge of this Court in **Sanjay Mahto v. The State of Bihar and Others (Cr.W.J.C. No. 2436 of 2018)**.

7. Learned Counsel for the State has not controverted the facts stated by learned Counsel for the petitioner.

8. I have heard learned Counsel for the parties concerned and have gone through the materials available on record.

9. Section 56 of the of the Bihar Prohibition and Excise Act, 2016, deals with the articles which are liable for confiscation under this Act.

10. Section 56 of the Act reads as under:

“56. Things liable for confiscation. -

Whenever an offence has been committed, which is punishable under this Act.-

(a) any intoxicant or liquor unlawfully imported, transported, manufactured, sold, stored, possessed, material, utensil, implement, apparatus, package or covering and or the other contents, if any, of such receptacle, package or covering for the purposes of storing, manufacturing or labelling such intoxicant or liquor;

(b) any animal, vehicle, vessel or other



conveyance used for carrying any intoxicant or liquor; or

(c) any premises or part thereof that may have been used for storing or manufacturing any liquor or intoxicant or for committing any other offence under this Act;

shall be liable to be confiscated in a manner prescribed under the provisions of the Act,

(d) The State Government, if deem necessary, may issue necessary directions, guidelines, Regulations and instructions with respect to mode and manner of search, seizure and confiscation.”

11. In the case in hand, no intoxicant or liquor has been recovered either from the possessions of the petitioner or from the vehicles seized. The Superintendent of Police, Aurangabad, has also not given his approval for initiating any confiscation proceeding.

12. The vehicles and other articles were seized on 27.06.2022 and the vehicles are lying in the Police Station under open sky and if the same is left over there, the vehicles will loose road worthiness. It is an admitted position that no liquor has been recovered from the seized vehicles and the Superintendent of Police has also not given his approval for initiating any confiscating proceeding.



13. Accordingly, the order, dated 20.01.2023, passed by the learned Special Judge, Excise Court No. 1, Aurangabad, in Barun Police Station Case No. 271 of 2022, is set aside and the learned Special Judge, Excise Court No. 1, Aurangabad, is directed to release the vehicles and mobile phones, in question, in favour of the petitioner after verifying the ownership/registration of the vehicle within a period of two weeks from the date of receipt/production of a copy of this order, subject to the following conditions:-

(i) That the petitioner shall furnish adequate security of Rs. 4 lakhs for Hyundai Venue 1.4 CRDI MT SX car, having registration no. BR 24Z/7650, Rs. 50,000/- for TVS Apache RTR 180 motorcycle, bearing registration no. BR 26J/1876 and Rs. 5,000/- each for the mobile phones, to the satisfaction of the court.

(ii) That before handing over the vehicles and mobile phones to the petitioner, a detailed and proper *punchnama* of the said vehicles and mobile phones after taking its photograph shall be prepared.

(iii) That the petitioner shall also execute bond that the vehicles and mobile phones, in question, shall be produced as and when required at the time of trial.



(iv) That the petitioner shall also furnish an undertaking on oath that he shall not alienate or part with the ownership of the vehicles and mobile phones till pendency of the trial.

14. In the result, this writ application is allowed with the aforesaid observations and directions.

AFR/
Prabhakar Anand/-

(Anil Kumar Sinha, J.)

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