

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5245 of 2023

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Sonu Kumar, Son of Shailendra Singh, Resident of Dumari Chhapiya (Nayka Tola), P.S.-Mashrakh, District-Saran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Excise, Government of Bihar, Patna.
2. The District Magistrate-Cum-Collector, Siwan.
3. The Superintendent of Police, Siwan.
4. The Station House Officer (S.H.O.) of Maharajganj Police Station, District-Siwan.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sanjay Kumar Singh, Advocate
For the Respondent/s : Mr.Vikash Kumar (SC-11)

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 16-05-2023

1. Let the Deputy Collector Land Reforms, Maharajganj be impleaded as Respondent No. 5 in the present petition. Registry to make necessary correction in the memo of parties.

2. The petitioner is aggrieved with the seizure of his vehicle (Mahindra Scorpio) bearing Registration No. BR-01PL9694, Engine No. EXMM4B18649, Chassis No. MA1IAZX2B22045. An FIR was registered on 30.01.2023 as Maharajganj P.S. Case No. 29/2023 for reason of recovery of



1.5 litre foreign liquor from the vehicle.

3. Learned counsel for the petitioner submits that Excise Case No. 04/2023-24 is pending before the Deputy Collector Land Reforms, Maharajganj.

4. The provision under Rule 12A of the Bihar Prohibition and Excise Rules, 2021 (hereinafter referred to as "Rules") speaks of a discretion conferred on the District Collector for release of the vehicle, if the offence is found to be one that would jeopardize public interest, if the vehicle is released. It is also provided in Rule 12A of the Rules that for such release being effectuated, a penalty of 50 percent of the insured value has to be imposed. We see from Rule 12B of the Rules, an analogous provision with respect to the seizure of property, from which liquor is recovered, that there are various factors which would regulate the discretion of District Collector in determination of penalty, which also includes the small quantity of liquor seized. Such a discretion is not available in Rule 12A of the Rules and it speaks of release only on deposit of 50 percent of the insured value.

5. We are of the opinion that the said provision is harsh and would result in arbitrariness at the hands of the District Collector and may even curtail the discretion which is



sought to be conferred by the Rule Making Authority, since 50 percent of the insured value has also been directed to be imposed, at the minimum.

6. In the above circumstances, we are of the opinion that the vehicle, considering the minimal quantity recovered, can be released on deposit of Rs. 20,000/-. On payment of penalty of Rs. 20,000/- (twenty thousand) before the authority concerned, the vehicle shall be released in favour of the petitioner and he shall be absolved from the confiscation proceedings. If the penalty is not satisfied within one month, the Confiscating Authority shall continue with the confiscation proceedings. The Seizing Officer shall immediately produce the vehicle/records before the Confiscating Authority, if not already produced.

7. Writ application is disposed of.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

P.K.P./Anushka

AFR/NAFR	
CAV DATE	
Uploading Date	19.05.2023
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