

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Writ Jurisdiction Case No.682 of 2023**

Arising Out of PS. Case No.-50 Year-2023 Thana- DORIGANJ District- Saran

=====

Surendra Singh Nirwan @ Surendra, Son of Ved Pal Singh, Resident of 113,  
Karhera, Mohan Nagar, P.S.- Gaziabad, District - Gaziabad. Uttar Pradesh.

... .. Petitioner

Versus

1. The State of Bihar through the Additional Chief Secretary, Excise and Prohibition, Patna. Bihar
2. The District Magistrate, Saran at Chapra. Bihar
3. The Superintendent of Police, Saran at Chapra. Bihar
4. The Officer In-charge, Doriganj Police Station, Saran at Chapra. Bihar
5. The Investigating Officer, Doriganj P.S. Case No. 50/2023. Bihar

... .. Respondents

=====

**Appearance :**

For the Petitioner/s : Mr. Sanjay Kumar, Advocate  
For the Respondent/s : Mr. Vivek Prasad, Advocate

=====

**CORAM: HONOURABLE MR. JUSTICE SANDEEP KUMAR**  
**ORAL JUDGMENT**  
**Date : 18-05-2023**

Heard learned counsel for the petitioner and  
learned counsel for the State.

The petitioner seeks release of ‘Pulse Kachcha  
Aaam Candy’ contained in 960 Jars, which was loaded on a  
truck bearing Registration No. HR-39D-2837 on 20.02.2023  
through AVG Logistics Limited, Noida, for being unloaded at  
AARIKET BPS Enterprises Pvt. Ltd., Transport Nagar, Patna,  
but the same was seized in connection with Doriganj P.S. Case



No.50 of 2023 registered on 25.02.2023 for offence under Sections 30(a) & 41(1) of the Bihar Prohibition & Excise Act.

As per the F.I.R., the police got secret information that illicit liquor are being brought in a truck. The police on the basis of secret information, reached near Veer Kunwar Singh Bridge and saw that two motorcycles were coming from Ara side and one truck was following these motorcycles. Upon seeing the police party, the persons who were driving those motorcycles and the driver of the said truck fled away. Upon search of the truck, about 862 litres of foreign liquor was recovered from three cartons of the candy.

It is alleged by the petitioner that he is the authorized representative of Dharampal and Satyapal Food Limited and the Company manufactures food items. One of the food items which is manufactured by the company is 'Pulse Kachcha Aam Candy'. It is also alleged that one AARIKET BPS Enterprises Private Limited had placed demand of 'Pulse Kachcha Aam Candy' from the petitioner-company to be supplied at Transport Nagar, Patna. After booking of the said consignment, a consignee copy of said booking was handed over to the company and E-way bill was also generated on 20.02.2023.



It is further alleged by the petitioner that in normal circumstances, the consignment booked at NOIDA had to reach its destination at Patna within five days. When the consignment could not reach its destination at Patna within time then the petitioner-company started making search of the said truck. On inquiry, it was communicated by the driver that he has reached to Kanpur but on 26.02.2023 he confessed that he has left the said truck in an abandoned condition but did not disclose the location. Ultimately, a written complaint was filed through e-mail by Assistant Manager, AVG Logistics Limited. When the written complaint was filed by the Assistant Manager, AVG Logistics Private Limited, it transpired that the said truck was intercepted and seized by Doriganj Police on the allegation of carrying illicit liquor beneath the cartons of candy, which was booked by consignee and the consignment was to be delivered at Patna.

It has been contended that the petitioner-company has no knowledge about the illicit liquor loaded on the truck on the way to Patna and as such, no criminal liability can be fastened upon the petitioner-company. It has also been alleged that the ownership of pulse candy is with the petitioner-company and it is perishable in nature and it may be released in



favour of the petitioner, who is authorized representative of Dharmpal & Satyapal Food Limited.

The petitioner has submitted that his case is squarely covered by the judgment of the Hon'ble Supreme Court in the case of ***Sunderbhai Ambalal Desai & Ors. v. State of Gujarat*** reported in ***(2002) 10 SCC 283*** and the candy may be released in favour of the petitioner as it is perishable item.

Learned counsel for the State has opposed the prayer of the petitioner and has submitted that the seized items are case property and the same cannot be released.

I have considered the submissions of the parties. It is an admitted fact that the candy belongs to the petitioner-company and for the fault of the transporter or the driver, the same cannot be seized and confiscated by the prosecution under the Excise Act. Further, no Confiscation Proceeding has been initiated for confiscation of the candy. The seizure list is already with the police and that can be used in the trial of the accused persons. Moreover, the candy is perishable item.

In view of the above, this application is allowed and the 'Pulse Kachcha Aam Candy' seized in connection with Doriganj P.S. Case No.50 of 2023 shall be released by the police/seizing authority in favour of the petitioner-company



after the petitioner furnishes surety. The police/seizing authority will not ask for cash surety or the bank guarantee from the petitioner-company. The surety of the petitioner-company would suffice for the release of the candy.

**(Sandeep Kumar, J)**

pawan/-

|                   |             |
|-------------------|-------------|
| AFR/NAFR          | N.A.F.R.    |
| CAV DATE          | N/A.        |
| Uploading Date    | 26.05.2023. |
| Transmission Date | 26 05.2023. |

