

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6557 of 2023

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Shekhar Das, Son of Madhav Chandra Das @ Madhab Das, Resident of Village-Bachamari, Ward No.08, Police Station-Old Malda, District-Malda, District Malda (West Bengal).

... .. Petitioner/s

Versus

1. The State of Bihar through Secretary of Excise Department, Bihar at Patna.
2. The Collector-Cum-District Magistrate, Kishanganj
3. The Superintendent of Police, Kishanganj.
4. The Superintendent Excise Prohibition, Kishanganj.
5. S.H.O. Excise P.S. District-Kishanganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Raj Kumar, Advocate
For the Respondent/s : Mr.Vivek Prasad (GP- 7)

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 04-05-2023

1. The petitioner is aggrieved with the seizure of his vehicle bearing Registration No. WB-66AG-7985. An FIR was registered on 01.03.2023 as Kishanganj Excise P.S. Case No. 276 of 2023 for reason of recovery of 1.3 litre foreign liquor (Beer) from the vehicle.

2. Learned counsel for the petitioner submits that the confiscation proceeding has not been started till now.

3. 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.

4. 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.

5. 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 District Collector shall continue with the confiscation proceedings. The Seizing Officer shall immediately produce the vehicle/records before the Confiscating Authority, if not already produced.

6. Writ application is disposed of.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

P.K.P./Anushka

AFR/NAFR	
CAV DATE	
Uploading Date	09.05.2023
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