

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7213 of 2023

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Sahil Singh S/o Satendra Kumar Singh, Resident of Village Redma Chowk,
P.S. Daltenganj, District Palamu (Jharkhand).

... .. Petitioner/s

Versus

1. The State of Bihar through its Chief Secretary Old Secretariat, Bihar, Patna.
2. The Principal Secretary, Department of Excise Bihar, Patna.
3. The District Collector Aurangabad, District- Aurangabad.
4. The Superintendent of Excise, Aurangabad, District- Aurangabad.
5. The S.H.O. Excise, P.S. Aurangabad, District- Aurangabad.
6. Sub-Divisional Magistrate-cum-Presiding Officer, Excise Court-2,
Aurangabad

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ratneshwar Prasad, Advocate
For the Respondent/s : Mr. Kumar Manish, SC-5

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE MADHURESH PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 12-05-2023

1. The petitioner is aggrieved with the seizure of his motorcycle bearing Registration No. JH03AH1410, Chassis No. MBLHAW117NHD07333, Engine No.HA11EVNHD37562. An FIR was registered on 17.02.2023 as Aurangabad Excise P.S. Case No.124 of 2023, on seizure of the motorcycle for reason of recovery of 1 litre of country made liquor from the motorcycle.

2. Learned Government Advocate submits that confiscation proceedings have been initiated as Confiscation Case No. 88 of 2023 by Sub-Divisional Magistrate-cum-



Presiding Officer, Excise Court-2, Aurangabad.

3. Learned counsel for the petitioner submits that he has not received any notice.

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 or the Officer authorised by him for release of the vehicle, if the offence is found to be one not serious enough to jeopardize public interest. 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 or the Officer authorised by him 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 or the Officer authorised by him 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 motorcycle, considering the minimal quantity recovered, can be released on deposit of Rs. 20,000/-. Certified copy of this judgment shall be produced within two weeks before the Sub-Divisional Magistrate-cum-Presiding Officer, Excise Court-2, Aurangabad, who is *suo motu* impleaded as 6th respondent, and within two weeks from then if the penalty as provided herein is deposited, the motorcycle shall be released. If the penalty is not satisfied, the Sub-Divisional Magistrate-cum-Presiding Officer shall continue with the confiscation proceedings.

7. Writ application is disposed of.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

sumit/shashank-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.05.2023
Transmission Date	NA

