

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13455 of 2022

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Hariom Giri S/o Shiv Shankar Giri R/o Subhas Nagar, P.S.- Khelari, District- Ranchi (Jharkhand).

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Additional Chief Secretary, Prohibition Excise and Registration, Bihar, Patna.
3. The Excise Secretary, Prohibition Excise and Registration, Bihar, Patna.
4. Excise Commissioner, Bihar, Patna.
5. Collector-cum-District Magistrate, Aurangabad.
6. The Additional Collector-cum-Presiding Officer, Aurangabad.
7. Excise Superintendent, Aurangabad.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ashok 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 : 18-05-2023

The petitioner is aggrieved with the seizure of his vehicle bearing Registration No. JH01CX-8583, Chassis No. MAT541089J1B05604, Engine No.ISBE591804081B63668304. An FIR was registered on 12.09.2021 as Barun P.S. Case No. 302 of 2021, on seizure of the vehicle for reason of recovery of 1.5 litres of country made liquor from the vehicle.

2. 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 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 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.

3. 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.

4. 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/-. Certified copy of this judgment shall be produced within two weeks before the District Collector and within two weeks from then if the penalty as provided herein is deposited, the vehicle shall be released. If the penalty is not satisfied, the District Collector shall act on the confiscation.

5. Writ application is disposed of.

6. The above direction shall apply if the vehicle has not already been auctioned.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

K.C.Jha/-

AFR/NAFR	
CAV DATE	
Uploading Date	20.05.2023
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