

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.787 of 2023

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Taukir Alam Son of Abdul Qyum Ansari Resident of Village- Shekhpura, P.S.-
Tandwa, District- Aurangabad (Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Excise Department,
Government of Bihar, Patna.
2. The District Magistrate, Aurangabad.
3. The Superintendent of Police, Aurangabad.
4. The Officer-in-charge of Risiyap Police Station, District- Aurangabad
(Bihar).

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shailesh Kumar Singh, 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 MR. JUSTICE MADHURESH PRASAD)

Date : 21-04-2023

1. Writ application has been filed seeking release of
the petitioner's *Platina* motorcycle bearing Registration No.
BR26R7433, Engine No. PFYRKD19040, Chasis No.
MD2AY0KRD77785.

2. One Bolero pickup vehicle was stopped and
searched based on secret information regarding its carrying
illicit liquor. 225 litres illicit liquor was recovered from the
same. Nothing, however, is stated to have been recovered from
the petitioner's motorcycle, which was said to be accompanying
the pick-up vehicle. The alleged date of seizure is 06.09.2021.



3. It is apparent from perusal of Section 56 of the Bihar Prohibition and Excise Act (hereinafter referred to as “Act”), as it then stood, that an animal, vehicle, vessel or conveyance is liable to be confiscated if it is “used for carrying any intoxicant or liquor”.

4. In the instant case, it is admitted that no liquor whatsoever has been recovered from the petitioner’s motorcycle. The same is apparent from the prosecution case as recorded in the first information report in Risiyap P.S. Case No. 85 of 2021. The illicit liquor has been recovered from a white colored bolero pickup vehicle.

5. This Court vide order dated 02.02.2023 in the instant proceedings had directed the authorities to maintain *status quo* with respect to the petitioner’s motorcycle. Thereafter, a counter-affidavit has also been filed wherein it has specifically been stated in paragraph-13 that the motorcycle has not been auction sold up till now. The counter-affidavit states that the seized motorcycle was involved in illegal business and transportation of illicit liquor. The statement in the counter-affidavit cannot be supported with reference to the allegations made in the FIR or the seizure list. Referring to the same, learned counsel for the State is not in a position to show to this Court that there is any alleged recovery of illicit liquor from the



petitioner's motorcycle.

6. The Confiscating Officer i.e. the Senior Deputy Collector, in the order of confiscation dated 03.06.2022 (Annexure-C to the counter-affidavit), however, records a finding that liquor has been recovered from the petitioner's vehicle as well as the white *bolero* pickup vehicle.

7. Such finding of the Confiscating Authority is factually incorrect as is manifest from the FIR and the seizure list. In view of no alleged recovery from the petitioner's motorcycle, this Court would find that there was no basis whatsoever for the Confiscating Authority to arrive at a conclusion that the vehicle in question was being used for carrying any intoxicant or liquor, or that it was liable to be confiscated under Section 56 of the Act. The conclusion of the Collector is not only without any factual basis but is also suffering from a procedural irregularity in as much as no such satisfaction has been recorded as mandated under Section 58(2) of the Act. On the basis of incorrect and baseless conclusion, the petitioner has been deprived of his motorcycle. The Confiscating Authority may assume jurisdiction to confiscate the vehicle only after recording a satisfaction under Section 58 (2) regarding an offence under the Act being committed. Such satisfaction can only be founded on a factual premise of the



vehicle being used for carrying any intoxicant or liquor. The basic factual requirement being absent in the instant case since there is no recovery of any liquor whatsoever from the vehicle, the Confiscating Authority could not have assumed jurisdiction to proceed for confiscation of the vehicle in question.

8. The order of the confiscating authority dated 03.06.2022 is, therefore, factually and legally unsustainable. The same is quashed. The Collector (Respondent No. 2) is directed to release the petitioner’s motorcycle after due verification of the petitioner’s identity *vis-a-vis* ownership of the motorcycle, which must be completed within a period of two weeks from the date of receipt/production of a copy of this order.

9. Writ petition is allowed.

(K. Vinod Chandran, CJ)

(Madhuresh Prasad, J)

shashank/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02.05.2023
Transmission Date	NA

