

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6804 of 2024

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Nitish Kumar Son of Uchit Verma Resident of Jay Nagar, Pahari, Ward No. 33, P.S. and District - Lakhisarai.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Registration Excise and Prohibition, Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The District Magistrate-cum-Collector, Lakhisarai.
4. The Superintendent of Police, Lakhisarai.
5. The Senior Deputy Collector I/C District Legal Section, Lakhisarai.
6. The S.H.O. Excise Police Station, Lakhisarai.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Rabi Bhushan, Advocate
For the Respondent/s	:	Mr. Mujfabaul Haque, G.P. 12
		Mr. Manish Kumar, AC to G.P.12

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY)

Date : 14-05-2024

This writ petition has been filed by the petitioner against memo no. 218 order dated 15.02.2024 passed by the Senior Deputy Collector I/C District Legal Section, Lakhisarai in Excise P.S. Lakhisarai Case No. 716C2 of 2023.

2. By filing the present writ petition, the petitioner has prayed for the following relief(s):-

(i). To issue an appropriate order/s, direction/s including a writ preferably in the nature of CERTIORARI quashing



the order as contained in memo No.218 dated 15.02.2024 passed by the competent authority under the Bihar Prohibition and Excise Amendment Act 2022 whereby and whereunder he has passed the order to relase the petitioner's vehicle Mahindra Pickup bearing Registration No. BR-01G-8661 seized in connection with Excise P.S. Lakhisarai Case No. 716C2 dated 19.08.2023 subject to payment of Rs.5,00,000/- upon penalty imposed interms of provision under Bihar Prohibition and Excise act 2022.

(ii) To direct the concern respondent to release the petitioners vehicle bearing Mahindra Pickup Reg. No. BR-01GL-8661 on the payment of 10% of the insured value of vehicle in terms of Bihar Prohibition and Excise Act as Amended 2022 taking into account that the vehicle in questioni has been seized in connection with Excise P.S. Lakhisarai Case No.716 C-2 and lying open in the sky subject to speedy decay.

(iii) To any other relief/s to which the petitioner may be found entitled in the facts and circumstances of the case.

3. Briefly stated the facts of the case is that petitioner's vehicle is said to have seized for recovery of 135 litres of foreign liquor. On the basis of aforesaid fact, FIR No. 716C2 of 2023 dated 19.08.2023 was registered in Excise P.S. Lakhisarai under Sections 30(a) and 56(2) II of Bihar Prohibition and Excise



Amendment Act, 2018 and 2022.

4. Learned counsel for the petitioner submitted that vide memo no. 218 dated 15.02.2024 the Senior Deputy Collector I/C District Legal Section, Lakhisarai passed order in Excise P.S. Lakhisarai Case No. 716C2 of 2023 dated 19.08.2023 and imposed a fine of Rs. 5,00,000/- (five lakhs) for the seized vehicle i.e. Mahindra Pickup of the petitioner in case non-payment of stipulated time, within ten days auction order will be passed. Learned counsel further submitted that seized vehicle i.e. Mahindra Pickup was registered on 28.10.2022 bearing Registration No. BR01GL-8661 in the name of the petitioner. He further submitted that vehicle in question was purchased by the petitioner in the year 2022 and the insured value of the vehicle is Rs. 8,82,550/- He further submitted that under sub-rule (2) of Rule 12(A) of the Bihar Prohibition and Excise Act, 2021 read with Amended Rules 2022 and 2023, there is provision to release the vehicle subject to payment of 10% of value of insured vehicle. In the light of the aforesaid provision, fine cannot be more than Rs. 88,255/- and imposition of Rs. 5,00,000/- (five lakhs) is more than 10 % which is against the provision as mentioned in the said rule.

5. Counter affidavit on behalf of respondent no. 3 has been filed. In para 15 it has been narrated that the insured value of seized vehicle is Rs. 8,82,550/-. But as per the Rule 12A



as mentioned in Annexure R-3 to the counter affidavit, it is the discretionary power of the Collector or the Officer authorized by him, to impose a penalty which should not be less than 10% of insured value of the vehicles and should not be more than 5 lakhs and the penalty imposed by the Senior Deputy Collector I/C District Legal Section, Lakhisarai upon the petitioner is justified in view of the huge quantity of liquor seized and legal and hence, no interference is required.

6. From the perusal of the statutory provisions, penalty cannot be imposed more than 10% of the insured value of the vehicle. From the perusal of the record, it is crystal clear that value of vehicle is Rs. 8,82,550/- and so in the light of the given facts of the case, fine should not be more than Rs. 1 lakh as per sub-rule (2) of Rule 12(A) of the Bihar Prohibition and Excise Act, 2021 read with Amended Rules 2022 and 2023.

7. Keeping in view the discussions made above, order dated 15.02.2024 passed by the Senior Deputy Collector I/C District Legal Section, Lakhisarai in Excise P.S. Lakhisarai Case No. 716C2 of 2023 is hereby quashed.

8. In the above circumstances, we are of the opinion that model of the vehicle, considering the recovery of alleged illicit liquor, fine of Rs. 5,00,000/- (five lakhs) would be too harsh and it is reduced to a sum of Rs. 1,00,000/- (one lakh),



on deposit of Rs. 1,00,000/- (one lakh) motor vehicle be released. Certified copy of this judgment shall be produced within two weeks before the Senior Deputy Collector I/C District Legal Section, Lakhisarai and within two weeks from then if the modified fine as provided herein is deposited, the vehicle shall be released. If the fine is not remitted, Senior Deputy Collector I/C District Legal Section, Lakhisarai shall continue with the confiscation proceedings and consequential proceedings.

9. With the above observation/direction, the present petition stands disposed of.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

Amitkumar/
Alok-

AFR/NAFR	AFR
CAV DATE	07.05.2024
Uploading Date	14.05.2024
Transmission Date	N/A

