

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2650 of 2024

Sanjeev Kumar Son of Late Pawan Kumar Jha, R/o Village Laxmipur, Turki,
P.S.- Kurhani, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Secretary, Prohibition Excise and Registration Department, Government of Bihar.
2. The Secretary, Prohibition and Excise, Department of Prohibition, Excise and Registration, Bihar, Patna.
3. The Excise Commissioner, Prohibition Excise and Registration Department, Government of Bihar.
4. The District Magistrate, Muzaffarpur.
5. The Confiscating Officer Cum Addl. Collector, Disaster Management, Muzaffarpur.
6. The Superintendent of Police, Muzaffarpur.
7. The SHO, Kurhani Police Station, Muzaffarpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Mrityunjay Kumar, Adv.
For the State	:	Mr.Raghwendra Kumar, SC-22
		Mr.Vipin Kumar Singh, AC to SC-22

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

Date : 20-04-2024

In the instant petition, petitioner has prayed for
the following relief(s):-

*i. For Setting aside of the
Revisional Authority Order dated 04/09/2023
passed in Excise Revision Case No. 32/2023
(Annexure 6) passed by the Ld. Secretary,
Prohibition and Excise, Department of*



Prohibition, Excise and Registration, Bihar, Patna (Respondent No. 2).

ii. For issuing direction to the Respondent Nos. 2, 3 and 5 taking into kind consideration by virtue of newly amended Rule of Bihar Excise and Prohibition (Amended), Rule, 2023 duly issued Act No. 11/Excise Policy-01-03/2021/3671 dated 31 May, 2023 (Annexure 4 Series), Published vide Bihar Gazette No. 449 dated 31/05/2023 against the concurrent orders of Ld. Appellate Court, Patna and Ld. ADM Court, Muzaffarpur, ordered for confiscation of the Vehicle (Regd. No. BR 06PC-7498; Recovery of 29.280 Liters IMFL, Driving by the Driver of the Petitioner) may release as per amended rule in favour of the Petitioner.

iii. For setting aside of Orders dated 08/06/2023 passed in Appeal Case No. 60/2023 (Annexure 4) passed by Ld. Court of Excise Commissioner, Govt. of Bihar and order dated 10/04/2023 passed by the Addl. Collector, Disaster Management, Muzaffarpur in the Excise Confiscation Case (Case) No. 28/2022-23 respectively by which the Mahindra Scorpio vehicle of the Petitioner bearing Regd. No. BR 06PC-7498 has been ordered to confiscate and the said order upheld by the Appellate court order above mentioned.

iv. For issuing a direction



upon the respondent No 3 and 5 to release the Scorpio bearing Registration No. BR06PC-7498, Chassis no. MAITA2TDKF5J17286 and Engine No. TDF4J77424 in favour of the petitioner which was seized in connection with Confiscation Case No. 28/2022-23 arising out of Kudhani P.S. Case No. 495 of 2022 under Bihar Prohibition and Excise Act, 2018.

v. For issuance of appropriate Writ/Writs, Order/Orders, direction/directions as may be deemed fit and proper.

2. Petitioners' vehicle namely Scorpio bearing Registration No. BR06PC-7498 was involved in P.S Case No. 495 of 2022 for the offences under Bihar Prohibition and Excise Act, 2018. It was concluded in Confiscation Case No. 28/2022-23 insofar as confiscating the aforementioned vehicle. Thereafter, it was affirmed by the Appellate Authority in Appeal Case No. 60 of 2023 on 08.06.2023 and further Revisional Authority affirmed the order of the confiscating authority and Appellate Authority order on 04.09.2023 in Excise Revision Case No. 32 of 2023. Thus petitioner has assailed the impugned action of the respondents.

3. Perusal of the seizure of the liquor to the extent of 29.280 Litres of IMFL/Kingfisher strong beer. The



petitioner's involvement in the excise offence is for the first time and further value of the liquor read with the seizure of the vehicle would not commensurate insofar as confiscating vehicle.

4. The State Government have issued rules called Bihar Prohibition and Excise Rules, 2021. Sub-rule 2 of Rule 12A which was amended by which the concerned authority is empowered to impose fine from Rs. 1,00,000/- to Rs. 5,00,000/-. The aforementioned provision could have been invoked instead of confiscation of subject matter of the vehicle.

5. Having regard to these facts and circumstances, the impugned actions dated 08.06.2023 passed in Appeal Case No. 60 of 2023 and 04.09.2023 passed in Excise Revision Case No. 32 of 2023 are set aside. The concerned authorities are hereby directed to revisit the case and proceed to pass order under Rule 12A of Bihar Prohibition and Excise Rules, 2021, on an application to be filed by the petitioner within a period of two weeks from today. If such application is submitted, the concerned authority is hereby directed to invoke sub-rule 2 of Rule 12A of Bihar Prohibition and Excise Rules, 2021 read with amended Rules 2022 and 2023 in imposing fine. Such order shall be passed within a period of one week from the date of petitioner's application under Rule 12A of Bihar



Prohibition and Excise Rules, 2021. If the determined fine is remitted in the State Government treasury, in that event taking note of remittance of fine and proceed to release the subject matter of the vehicle in favour of the petitioner. The same shall be completed within a period of two months from the date of receipt of this order.

6. Writ petition allowed in part.

(P. B. Bajanthri, J)

(Alok Kumar Pandey, J)

shahzad/-
krishna kant

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	25.04.2024
Transmission Date	N.A.

