

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.38957 of 2022

Arising Out of PS. Case No.-290 Year-2019 Thana- BARAUNI District- Begusarai

PAWAN PANDIT S/o Harilala Pandit R/o village- Harpur, P.S.- Barauni
(Refinery O.P.), District- Begusarai.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Vivek Bharti, S.H.O., P.S.- Barauni (Refinery O.P.), Begusarai.
3. Ram Preet Yadav, Sub Inspector, P.S.- Barauni (Refinery O.P.), Begusarai.

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Shubhesh Pandey, Advocate
For the Opposite Party/s : Mr. APP

CORAM: HONOURABLE MR. JUSTICE CHANDRA SHEKHAR JHA
ORAL JUDGMENT

Date : 13-02-2025

Heard learned counsel appearing on behalf of the parties.

2. The present application has been filed for issuance of direction to release of amount in favour of the petitioner by quashing the order dated 26.03.2021 whereby the application for release, wrongly seized amount (Rs. 1,75,700/-) was refused by saying it that on perusal of the case record and report submitted by the I.O., “it appears that the seized money is received from the selling of illegal liquor, it would be subject matter of outcome of trial”, although the o/c of the concerned police station Barauni- (Refinery o.p.)



has given the letter of no objection on 25.03.2021, the police has wrongly and malafidely taken away several articles by preparing the seizure list showing the recovery of cash Rs. 1,75,700/- passbook 4 in numbers, a car of Maruti company with alleged wine, in connection with Barauni (Refinery O.P.) P.S. Case No. 290/2019, registered for the offence alleged under Section 30(a) of Bihar Excise Prohibition Act, 2016 pending in the court of learned Addl. Sessions Judge-II cum Spl. Judge Excise Act, Begusarai.

3. It is submitted by learned counsel for the petitioner that cash cannot be seized under the provisions of Bihar Prohibition and Excise Act, 2016. It is also submitted that said act is silent on the question, whether the seized cash can be released in favour of petitioner or not. It is also submitted that in similarly situated case, the Division Bench of this Court in C.W.J.C. No. 19300 of 2018 dated 18.04.2019 ordered to release cash in favour of the petitioner.

4. Learned APP could not disputed the fact as submitted above.

5. It would be apposite to reproduce the order dated



18.04.2019 as passed in C.W.J.C. No. 19300 of 2018,
where the observation has been made as follows:-

“.....We have heard learned counsel for the parties and we have perused the materials on record and examined the provisions of Section 58 of ‘the Act’ which nowhere empowers the Confiscating authority to confiscate any money found in possession of of a person charged with an offence under ‘the Act’. The order is illegal because cash is not a prohibitory item under ‘the Act’ and thus could not have been confiscated by the Confiscating authority in purported exercise of power under the said ‘Act’.

We accordingly quash the confiscation order dated 12.01.2018 passed in Confiscation Case N.5 of 2017 and direct the District Magistrate, Darbhanga to remit the amount in question to the petitioner with 48 hours on receipt/production of a copy of this order....”

6. In view of submission as advanced by learned counsel appearing for the parties and also by taking note of the law settled by the Division Bench in this regard, the seizure with regard to cash of Rs. 1,75,700/- is set aside forthwith from the date of receipt of copy of this judgment with a condition that at the time of release of the seized amount, the learned Addl. Sessions Judge-II cum Spl. Judge, Excise Act, Begusarai shall take an undertaking alongwith



surety bond of same amount i.e. Rs. 1,75,700/- from the petitioner subject to the outcome of present excise case.

7. With the aforesaid observation and direction, this application stands disposed of.

(Chandra Shekhar Jha, J)

veena/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.02.2025
Transmission Date	13.02.2025

