IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15678 of 2024

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Ramesh Sah Son of Prahlad Sah R/o- Singha, P.S.- Mirganj, District- Gopalganj.

... ... Petitioner/s

Versus

1. The State of Bihar through Secretary, Excise and Prohibition and Registration Department, Govt. of Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The Deputy Secretary, Excise Prohibition and Registration Department, Govt. of Bihar, Patna.
4. The Collector, Gopalganj, District- Gopalganj.
5. The District Magistrate, Gopalganj, Bihar.
6. The Superintendent of Police, Gopalganj, Bihar.
7. The Superintendent of Excise, Gopalganj, Bihar.
8. The Sub Inspector, Mirganj, District- Gopalganj.

... ... Respondent/s

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Appearance :

For the Petitioner/s	:	Ms. Priya Raj, Advocate.
For the Respondent/s	:	Mr. Mujtabaul Haque, GP-12.
		Mr. Pranoy Kumar, AC to GP-12

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CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI
and
HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
C.A.V. JUDGMENT
(Per: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA)

Date : 05-03-2025

Heard both the parties.

2. The present writ petition has been filed by the petitioner seeking issuance of Writ of Certiorari quashing the order dated 29.07.2024 passed by the Excise Commissioner, Patna in Excise Appeal case No. 64 of 2024 and for release of Honda Shine Motorcycle having Registration No. BR-28Y-

2559, Engine No. JC83EG0336648 and Chassis No. ME4JC832BMG129942 which has been seized in connection with Mirganj P.S. Case No.404 of 2023 dated 27.10.2023 for the alleged offence under Section 414 of Indian Penal Code and 30(a) Bihar Prohibition and Excise (Amendment) Act, 2018 in favour of the petitioner as he is the real and registered owner of the seized vehicle.

3. The brief facts of the case are that during patrolling and checking of vehicles, the police party intercepted two persons on motorcycle who tried to flee away in which one accused namely Mintu Kumar was apprehended with Motorcycle ‘Passion Pro’ on which plastic sack containing 72 liters illicit country made wine was recovered. Another motorcycle i.e., ‘Honda Shine’ was seized by the police along with 35.200 liters of illicit country made liquor in a plastic bag tied with the said motorcycle. The apprehended co-accused Mintu Kumar disclosed the name of petitioner that he fled away. The alleged illicit liquor along with both motorcycles were seized and an FIR bearing Mirganj P.S. Case No. 404 of 2023 was registered on 27.10.2023 under Section 414 of Indian Penal Code, 1860 and Section 30 (a) of Bihar Prohibition and Excise (Amendment) Act, 2018 against co-accused Mintu Kumar and the petitioner. Thereafter, confiscation proceeding was started which have attained finality on 27.12.2023.

4. The writ petition filed by the petitioner vide CWJC No. 7129 of 2024 for release of vehicle in question was disposed of vide order dated 07.05.2024 with permission to the petitioner to prefer appeal before the Appellate Authority under Section 92 of the Bihar Prohibition and Excise Act, 2016 (herein after referred to as ‘the Act’) and it was also directed therein that in the meanwhile, the concerned officials shall not proceed with the auction till disposal of petitioner's appeal.

5. The appeal preferred by the petitioner vide Excise Appeal Case No. 64 of 2024 before Commissioner Excise, Bihar was dismissed vide order dated 29.07.2024 and the Appellate Authority approved the order of the Court of Additional Collector, Gopalganj in confiscation (Excise) Case No. 2013 of 2023. The Appellate Authority observed that two similar cases have also been registered against the petitioner under Excise Act. It is also observed that the petitioner has no right to claim the release of vehicle on payment of required fine in view of Explanation 1 of Section 57B of the Act as amended under Bihar Prohibition and Excise (Amendment) Act, 2022 and considering Rule 12A (3) of Bihar Prohibition and Excise

(Amendment) Rules, 2022.

6. Learned Counsel for the petitioner submitted that the petitioner is valid owner of the motorcycle in question, who is innocent and has been falsely implicated in this case. He has no concern with the seized liquor and it was not recovered from the petitioner in person. Accordingly, the vehicle in question may be released on penalty.

7. Per contra, the learned Counsel for the respondents submitted that the petitioner is a named accused. A large quantity of about 35.200 liters of illicit liquor was recovered from the vehicle in question and all the procedures from point of seizure to confiscation of the vehicle have been complied with. The petitioner is a habitual offender of the Act and has previously been associated with offence of same nature for which two F.I.R. were lodged against the petitioner who has no honor for the law of land. The vehicle in question is used in transportation of illicit liquor which is against the provision of the Act. There is no evidence to show that the vehicle in question has not been used in transportation of illicit country-made liquor. Therefore, the release of vehicle is not in public interest. Accordingly, confiscation of seized motorcycle under Section 56 (2) in question in favour of State is justified. As per

Section 61 of the Act, after confiscation the vehicle in question vests with the Government and it has been kept in safe custody. It is underway to auction but it is yet to be auctioned.

8. In the present case, petitioner’s motorcycle in question was seized on spot due to recovery of 35.200 litres of illicit liquor from the said motorcycle. It is evident from the recovery of such a substantial quantity that the vehicle in question was used for the purpose of conveyance in illicit liquor trade.

9. The Act was enacted with effect from 02.10.2016 to enforce, implement and promote complete prohibition of liquor and intoxicants within the territory of the State of Bihar. It had repealed the Bihar Excise Act, 1915. Section 56 of the Act provides for confiscation of seized items which reads as follows:

> ***“56. Confiscation of Seized Items.-*** *(1) Notwithstanding anything contained in Section-57B, whenever an offence punishable under this Act, is committed, the Collector or an officer authorized by him may confiscate such items based on the report of the investigating officer.*
> *(2) Such items may include –*
> > *(i) any premises or part thereof;*
> > *(ii) any animal, vehicle, vessel or conveyance;*
> > *(iii) any liquor or intoxicant;*
> > *(iv) any other item having bearing with the case;*

Provided, where things as mentioned in section-57 are to be destroyed, then the Collector or an officer authorized by him need not confiscate the same before their destruction.
(3) The State Government may issue necessary direction, guidelines, regulations and instructions with respect to the mode and manner of search, seizure, destruction and confiscation."

10. Section 57B of the Act as inserted in 2022, by way of amendment, provides that any vehicle used for committing any offence punishable under the Act and having been seized by any police officer or Excise Officer may be released by the Collector upon payment of such penalty as may be notified by the State Government. This Section reads as under:-

"57B. Things or premises liable to be released upon penalty.-

(1) Any animal, vehicle, vessel or other conveyance used for committing any offence punishable under this Act that has been seized by any police Officer or Excise Officer may be released by the Collector upon payment of such penalty as may be notified by the State Government.

(2) Any premises or part thereof used for committing any offence punishable under this Act that has been seized by any police Officer or Excise Officer may be released by the Collector upon payment of such penalty as may be notified by the State Government.

(3) If the person concerned does not pay the

penalty, then the Collector shall proceed to confiscate the said animal, vehicle, vessel or other conveyance and premises as per section-58.

***Explanation 1**.- It shall not be a right of the accused to get his conveyance, item or premises released upon payment of the required penalty. The Collector, based upon a report by a police officer or an excise officer, may, for reasons to be recorded in writing, still refuse to release the said conveyance, item or premises and proceed ahead with confiscation and auction/destruction.*

***Explanation 2.**-The Collector shall, from the date of this Amendment coming into force, close the on-going confiscation proceedings if the person concerned pays the penalty as notified and release such vehicle, conveyance or premises.*

***Explanation 3.**-Such release shall not affect the outcome of trial, if any before the Special Court."*

(*emphasis supplied*)

11. Rule 12A of Bihar Prohibition and Excise Rules, 2021, as inserted in 2022 by way of amendment, and further amended by the Bihar Prohibition and Excise (Amendment) Rules, 2023 provides for release of vehicle, conveyance etc. on payment of penalty. This Rule reads as follows:-

"12A. Release of Vehicles, Conveyance etc. on Payment of Penalty.-

(1) If any vehicles, conveyance, vessel, animal etc. has been seized by any police or excise officer under the Act, then in terms of Section 57B (1) of

the Act, the Collector or an officer authorized by him upon receipt of an application in Form IV by the owner of the said conveyance or vehicle etc., may release the said conveyance or vehicle upon payment of such penalty as may be ordered by the Collector or the officer authorized by him.

Provided, where it is not possible to ascertain the owner of the vehicle or the owner is not coming to claim the vehicle, the Collector or the officer authorized by him, after waiting for 15 days from the date of seizure, shall proceed to confiscate and auction the vehicle as per the provisions of the Act.

(2) The amount of penalty shall be as decided by the Collector or the Officer authorized by him. While imposing the penalty, he shall have due regard to the quantity of intoxicant recovered, involvement of the vehicle owner and the latest insurance value of the vehicle. In no case, the penalty should be less than 10% of the insured value of the vehicle and more than Rs. 5 lakhs. The insured value is the value of the vehicle as assessed by the insurance company. Where, the insured value is not available or the Collector or the Officer authorized by him has reason to believe that the vehicle is undervalued, he shall get the valuation done by the District Transport Officer.

In any case, the Collector shall not wait beyond 15 days from the date of seizure and if during this period, the accused/owner does not pay up the penalty, he shall proceed with the confiscation/auction.

(3) <u>Notwithstanding above, if on a report by police officer or excise officer, the Collector or the officer authorized by him is satisfied that releasing the vehicle or conveyance shall not be in the public interest, he shall proceed ahead with the</u>

confiscation of the said vehicle or conveyance and its subsequent auction/disposal.

(4) Where the conveyance is such that its valuation/insurance is not possible, the Collector or the officer authorized by him shall impose such fine as he deems fit. While imposing such fine, the Collector or the officer authorized by him shall have due regard to the economic status of the individual, nature of his involvement in the crime and the quantum of intoxicant recovered.

(5) Such penalty shall be, regardless of the outcome of the trial if any, before the Special Court, non-refundable.

(6) The owner of the vehicle/conveyance shall, after the release of the vehicle/conveyance, produce the vehicle/conveyance as and when required by the authorities.

Explanation. *In all pending/ongoing cases of confiscation/auction of vehicles, the Collector or the officer authorized by him may give an opportunity to the existing owner to pay the aforesaid penalty and get the vehicle released. Upon satisfaction about ownership and upon payment of such penalty, the ongoing confiscation/auction proceeding may be dropped and the vehicle released."*

(emphasis supplied)

12. On bare reading of Section 57B (1) of the Act, it is explicit that any vehicle or other conveyance used for committing any offence punishable under the Act and seized may be released upon payment of penalty. Explanation 1 of Section 57B of the Act read with Sub-Rule 3 of Rule 12A bars the right of the accused to get his conveyance, item or premises released upon payment of the required penalty. Upon a report by a police officer or an Excise Officer, the Collector in the public interest may still refuse to release the said conveyance, item or premises for reasons that must be recorded in writing and proceed ahead with confiscation and auction/destruction.

13. The purpose of confiscating the vehicle under the Act in the public interest is to deter the offender using his vehicle to transport illicit liquor or other contraband goods, to safeguard the public health and to achieve the objective of the Act.

14. Upon perusal of records, it is evident that the petitioner has been involved in similar offences, as two prior FIR of his involvement in excise cases have been registered vide Mirganj P.S. case No. 87 of 2017 and Mirganj P.S. Case No. 135 of 2020 which shows that petitioner is habitual in such transactions. The vehicle in question was used as conveyance of illicit liquor trade, the release of which is not in public interest. The said reason has been recorded in writing by the concerned authority for refusal to release the vehicle in question.

15. Hence, we find that the twin prerequisites for seizure and confiscation of a vehicle under the Act i.e., use of the vehicle in carrying/transporting the liquor or intoxicant and the consent or connivance of the owner of such vehicle in commission of the offence, are fulfilled. Consequently, the petitioner has no right to claim release of vehicle on payment of penalty. The petitioner has not made out any valid ground to interfere in the impugned order dated 29.07.2024 passed by the Excise Commissioner, Patna in Excise Appeal Case No.64 of 2024.

16. Accordingly, the present writ petition stands dismissed.

(Sunil Dutta Mishra, J)

I agree
P. B. Bajanthri, J

(P. B. Bajanthri, J)

Ritik/-

AFR/NAFR	NAFR
CAV DATE	14.02.2025
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