IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15726 of 2024

Md. Mahabub S/o Md. Ali Resident of Bardauni, Ward No. 02, P.S. Bithan, District Samastipur.

... ... Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Excise Department New Secretariat, Patna.
2. The Commissioner, Excise Department (Head Office) Bihar, Patna.
3. The District Magistrate, Banka.
4. Senior Superintendent of Police, Banka.
5. The District Panchayat Raj Officer cum Excise Magistrate, Banka.
6. S.H.O. Excise Police Station, Banka.

... ... Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Md. Harun Quareshi, Advocate.
For the Respondent/s	:	Mr. Standing Counsel-10.

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 : 06-03-2025

1. Heard both the parties.

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

> *(i) For issuance of a writ in the nature of certiorari or any other appropriate writ, order and direction may be issued against the respondents for quashing the order dated 29.07.2024 passed in Excise Appeal No.57/2024 by the learned Excise Commissioner Bihar Patna by which order rejected the Excise Appeal No.57/2024 of the petitioner and upholding the impugned order passed by District Panchayat Raj Officer-cum-Excise Magistrate, Banka vide memo no.3764 dated 20.12.2023 Excise Case*

No.880/2023 and rejected the same.
(ii) For issuance of writ in the nature of certiorari or any other appropriate writ, order and direction for commanding the respondents for quashing the letter dated 16.03.2024 vide Memo no.246 by which order rejected the show cause of the petitioner which is filed in Excise Case No.880/2023 and further gave t5he direction to confiscate the truck in question under the Amended Act of Rule 3 "12 Ka" (2).
(iii) For issuance of the writ in the nature of Mandamus or any other appropriate writ and then commanding to release the truck of the petitioner which registered number WB-23F-7620, Engine No. 3.3LNGD06EXX515538, Chassis No. MAT563010N7E13287 which is line in the premises of excise P.S. Banka an open area in any other relief or reliefs may be granted in the favour of the petitioner.

3. As per prosecution's case, there has been recovery of 250 cartons of Codein Phosphate syrup in which 25,000 bottles containing total of 2,500 liters of Codein syrup was recovered from the truck bearing Registration No. WB-23F-7620, Engine No. 3.3LNGD06EXX515538 and Chassis No. MAT563010N7E13287. On the basis of aforesaid facts, an F.I.R. was registered on 01.12.2023 bearing Excise P.S. Case No.880 of 2023 under Sections 30 (a) and (f), 31 and 47 of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as 'the Act') and the truck was seized. The confiscation proceeding was initiated under Section 58 of the Act. In confiscation proceeding i.e. Excise Case No.880/2023, the vehicle in question was confiscated vide order dated 16.03.2024 by District Panchayati Raj Officer-cum-Excise Magistrate, Banka. The petitioner against the said order had filed Excise Appeal Case No.57 of 2024 which was dismissed by Excise Commissioner, Patna vide order dated 29.07.2024.

4. Learned counsel for the petitioner submitted that the petitioner had no knowledge about the type of articles being loaded in his vehicle since, the consignment was loaded at Dhillon Freight Carrier Pvt. Ltd. Haryapatti, Kolkata in his absence. It is further submitted that the petitioner was not given appropriate opportunity as he was ready to furnish the penalty for release of the vehicle in question but the same was rejected. Moreover, the learned Confiscating Authority has not considered the fact that the articles recovered from the vehicle in question come under the purview of NDPS Act and the said case was filed under Excise Act.

5. Per contra, learned counsel for respondents submitted that the contentions raised by the petitioner are not tenable in light of the orders passed by the respondent authorities. It is further submitted that the petitioner himself is owner and driver of vehicle in question and he is well aware about the articles recovered from it and he cannot take false and absurd ground that he had no knowledge of the aforesaid articles or it was loaded in his absence. Furthermore, it is submitted that 'Codein' is a notified intoxicant in exercise of the power conferred under Section 3 of the Act. Therefore, it makes a sufficient ground for initiating the proceeding under the Act against the petitioner on recovery of such a heavy quantity of intoxicant in the form of 'Codein'.

6. 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.

7. 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.

8. The concerned authority under the Act after hearing the petitioner concluded that 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.

9. Hence, we find that the twin pre-requisites 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.57 of 2024.

10. Accordingly, the present writ petition stands **dismissed**.

(Sunil Dutta Mishra, J)

I agree
P. B. Bajanthri, J

(P. B. Bajanthri, J)

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AFR/NAFR	NAFR
CAV DATE	14.02.2025
Uploading Date	06.03.2025
Transmission Date	NA