

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.2638 of 2025

Arising Out of PS. Case No.-62 Year-2025 Thana- KACCHWA District- Rohtas

Ankit Raj S/O Late Raj Kumar R/O Village- Railway Crossing, west Gumti,
near jain College, P.S.-Nawada, District-Bhojpur (Arrah).

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary Government of Bihar, Patna Bihar
2. The District Magistrate-cum-Collector Rohtas, Bihar Bihar
3. The Superintendent of Police (SP) Rohtas. Bihar
4. the Superintendent of Police (SP), Bhojpur (Arrah) Bihar
5. The Station House Officer (SHO) Kachhawa, Rohtas Bihar
6. The Station House Officer (SHO), Nawada, Bhojpur (Arrah). Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Sarfraz Ahmad, Adv.
Mr. Sonu Singh, Adv.

For the Respondent/s : Mr. Rajeshwar Singh, G.A 10
Mr. Jitendra Kumar, AC to GA 10

CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 05-12-2025

Heard learned counsel for the petitioner as well as
learned counsel for the State-respondents.

02. This writ petition has been filed seeking the
following reliefs:-

“I-To issue a writ of mandamus or any other appropriate writ order or direction commanding the respondents particularly Respondent Number- 2 (District Magistrate-cum Collector, Rohtas) to release the petitioner's motorcycle, Hero Glamour bearing Registration No. BR03W1005, MBLJAR019H9J40862, Chesis Engine No. - JA06EHH9J21713, in the favour of the petitioner forthwith he is the Rightful owner of the said vehicle.

II. To quash or set aside the impugned order dated 26-08-2025 passed by the Learned Sri Santosh Kumar-1 Exclusive Special Exclusive



*Judge Excise Court No-1, Rohtas at Sasaram
Rejecting the petitioner's release petition.*

*III. This Hon'ble Court may adjudicate and
Hold that for the offence committed by some
one / Accused persons (Theft and liquor
Mafia) alleged FIR No.- 62/25 dated 14-03-
2025 in which petitioner is itself a victim
hence the petitioner is innocent therefore
cannot be punished.*

*IV. This Hon'ble Court may adjudicate and
Hold that in the given situation the petitioner
cannot be deprived prevented from taking
release of his vehicle (Hero Glamour Bike).*

*V. To aware cost of litigation and suitable
compensation for the irreparable loss and the
damage caused to the petitioner due to
arbitrary and whimsical decision of the
Respondent.*

*VI. To award any other relief or reliefs as
prayed for by the petitioner in this case.”*

03. The fact of the case is that FIR bearing Kachhawa P.S. Case No. 62 of 2025 has been lodged on 14.03.2025 for the offences under Section 317(5) of the BNS and Section 30(a) of the Bihar Prohibition and Excise Act, 2022 apprehending two persons for transporting 126 litres of illicit liquor on a motorcycle. The said motorcycle and the illicit liquor has been seized from the spot and the petitioner is the owner of the alleged motorcycle.

04. Learned counsel for the petitioner submits that the petitioner is the *bona fide* owner of the alleged motorcycle, Hero Glamour bearing Registration No. BR03W1005, Chesis



No. MBLJAR019H9J40862, Engine No. JA06EHH9J21713 which was seized in connection with Kachhawa P.S. Case No. 62 of 2025. Learned counsel further submits that the said motorcycle of the petitioner was stolen and petitioner had earlier lodged Nawada P.S. Case No. 118 of 2025 on 20.02.2025 in this regard. Police has submitted charge sheet in Kachhawa P.S Case No. 62 of 2025 on 30.04.2025 against the two apprehended accused persons but the charge sheet has not been submitted against the petitioner finding him innocent. Learned counsel for the petitioner further submits that the, A.S.I., Kachhawa Police Station vide its letter no 2148/2025 dated 03.12.2025 to the District & Sessions Judge-I, Exclusive Special Excise Court, Rohtas at Sasaram has submitted that he has no objection for the release of vehicle of the petitioner. However, learned Exclusive Special Exclusive Judge Excise Court No. -1, Rohtas at Sasaram vide its order dated 26.08.2025 considering the bar of Section 60 of Bihar Prohibition and Excise Act rejected the prayer of the petitioner for the release of his vehicle and the said order is unjust and needs to be set aside by this Court.

05. Learned counsel appearing on behalf of the State submits that the vehicle of the petitioner has been seized for being used in transportation of 126 litres of illicit liquor.



06. Perused the record.

07. From perusal of the record, it transpires that the petitioner was not sent up for facing trial and charge sheet was not submitted against him. The vehicle has been seized as it was found that *126 litres of illicit liquor* was being transported in the said vehicle. However, there is earlier FIR lodged by the petitioner for theft of his vehicle and the police has not submitted charge sheet against the petitioner. Also, the A.S.I., Kachhawa Police Station vide its letter no 2148/2025 dated 03.12.2025 also submitted that he has no objection in release of the vehicle of the petitioner. Evidently, the petitioner could not be fastened with liability for something he has not done and he could not be penalized by seizure and confiscation of his vehicle which was earlier stolen. The learned trial court would otherwise have released the vehicle but for the bar of Section 60 of Bihar Prohibition and Excise Act.

08. Now, Section 60 of Bihar Prohibition and Excise Act reads as under :

*“60. Bar of jurisdiction in confiscation—
Whenever any liquor, material, still, utensil,
implements or apparatus or any receptacle,
package, any animal cart, vessel, or other
conveyance used in committing any offence, is
seized or detained under this Act, no court
shall have, notwithstanding anything to the
contrary contained in any other law for the*



time being in force, jurisdiction to make any order with regard to such property”.

09. Therefore, the learned trial court considered it appropriate not to release the vehicle considering the bar under Section 60 to be absolute. But the language of Section 60 makes it clear that when liquor, material, still, utensil, implements or apparatus or any receptacle, package, any animal cart, vessel, or other conveyance used in committing any offence, is seized or detained under the Excise Act, then only the court would have no jurisdiction to make any order with regard to such property. But when the investigating authorities have themselves submitted before the court concerned that they have no objection in release of this vehicle, there was no occasion for it being seized or detained under the Excise Act.

10. Further, it is pertinent to note that despite provisions for bar of jurisdiction of any Court in any statute, writ jurisdiction of High Court is not ousted. In this regard, reliance can be placed on the decision of this Court in the case of ***Suresh Sah Vs. State of Bihar & Ors., 2020 (1) BLJ 706***, wherein learned Division Bench of this Court had occasion to consider the jurisdiction of Special Excise Court and High Court in view of Section 60 of Bihar Prohibition and Excise Act, 2016. Here, it was clearly held that in the light of Section 60 of said



Act, jurisdiction of Special Excise Court is barred, but such bar does not operate in the exercise of jurisdiction under Article 226 of the Constitution of India. The relevant paragraph of the Suresh Sah case (supra) reads as follows:-

“28. Even if the vehicle is not liable for confiscation then the Special Judge under the Act in view of the bar under Section 60 of the Act does not have the jurisdiction to direct for the release of the vehicle. However, such bar will not operate in exercise of jurisdiction under Article 226 of the Constitution of India, since such power is required to be exercised in the given prevailing monstrous situation.....”

11. Further, the Hon’ble Supreme Court in the case of ***Sunderbhai Ambalal Desai Vs. State of Gujarat***, reported in ***(2002)10 SCC 283*** has observed the following:

“In our view, the powers under Section 451, Cr PC should be exercised expeditiously and judiciously. It would serve various purposes, namely:-

- 1. Owner of the article would not suffer because of its remaining unused or by its misappropriation;*
- 2. Court or the police would not be required to keep the article in safe custody;*
- 3. If the proper panchnama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and*
- 4. This jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.”*



12. While dealing with the seized vehicles from time to time by the police either in commission of various offences or abandoned vehicles or vehicles which are recovered during investigation of complaint of thefts, the Hon'ble Supreme Court in the case of ***Sunderbhai Ambalal Desai*** (supra) further observed as under:-

“In our view, whatever be the situation, it is of no use to keep such-seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.

In case where the vehicle is not claimed by the accused, owner, or the insurance company or by third person, then such vehicle may be ordered to be auctioned by the Court. If the said vehicle is insured with the insurance company then insurance company be informed by the Court to take possession of the vehicle which is not claimed by the owner or a third person. If Insurance company fails to take possession, the vehicles may be sold as per the direction of the Court. The Court would pass such order within a period of six months from the date of production of the said vehicle before the Court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared.”

13. Having regard to the position of law and the facts



and circumstances giving rise to the present anomalous situation and as no useful purpose would be served in keeping the vehicle at the police stations for a long period which results in national loss this Court thinks it fit and proper to exercise its extraordinary power under Article 226 of the Constitution of India and order for release of vehicle bearing Registration No. BR03W1005, Chesis No. MBLJAR019H9J40862, Engine No. JA06EHH9J21713 in favour of its registered owner/petitioner forthwith subject to the satisfaction and conditions to be imposed by the court concerned.

14. It is ordered accordingly.

15. Accordingly, the present writ petition stands allowed.

(Arun Kumar Jha, J)

Anuradha/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	08.12.2025
Transmission Date	08.12.2025

