IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No. 4144 of 2026

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Anish Kumar Son of Kaushal Prasad, Resident of Kailuchak, P.S.-Masaurhi, District-Patna, Bihar.

... ... Petitioner/s

Versus

1. The State of Bihar Bihar.
2. Apar Mukhya Sachiv, Rajaswa evam Utpad Vibhag, Govt. of Bihar, Patna.
3. Zila Samaharta, Jehanabad.
4. Police Adhikshak, Jehanabad.
5. Thana Adhyaksh, Jehanabad.

... ... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajeev Kumar, Adv.

For the State : Government Pleader-2

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH

and

HONOURABLE MR. JUSTICE ARUN KUMAR JHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH)

Date: 30-03-2026

The present writ petition has been filed for release of the seized Toto / e-Rickshaw bearing Registration No. BR-01RB-5317, Chassis No. M3JMMMMX1M1K56791 and Motor No. 20241017363, which has been seized in connection with Ghoshi P.S. Case No. 507/2025 dated 22.9.2025, registered under Section 281, 125(a) and 125(b) of the Bhartiya Nyaya Sanhita, 2023 as also under Section 37 of the Bihar Prohibition and Excise (Amendment) Act, 2022.

2. The brief facts of the case, according to the petitioner are that the E-rickshaw / toto vehicle of the petitioner was being driven by one Guddu Kumar on 21.9.2025 and the police received information that the said Guddu Kumar, who was driving the toto vehicle has hit one motorcycle rider and when the police had reached there, they found that the said Guddu Kumar was in an inebriated condition, however in the meantime the person, who had been hit by the said toto vehicle, was taken to the Primary Health Centre, Ghoshi for preliminary treatment, but was referred to Jehanabad for better treatment. The said incident led to seizure of the toto vehicle on account of the driver of the said vehicle, who was driving the same, being in an inebriated condition and having hit the motorcycle in question, leading to injuries being sustained by the driver of the said vehicle. This led to filing of Ghoshi P.S. Case No. 507/2025 under Section 281, 125(a) and 125(b) of the Bhartiya Nyaya Sanhita, 2023 and Section 37 of the Bihar Prohibition and Excise (Amendment) Act, 2022.

3. The learned counsel for the petitioner has submitted that the petitioner is the owner of the toto vehicle in question, however the same was being driven by his driver, namely Guddu Kumar on the alleged date and time of occurrence, who

is alleged to have hit the motorcycle in question, being in an inebriated condition, leading to injuries being sustained by the rider of the motorcycle in question, hence it is submitted that the petitioner is having no complicity in the matter. It is further submitted that the driver i.e. Guddu Kumar has already been granted bail and moreover, the petitioner is neither in any way involved in the alleged occurrence nor he was present at the time of the occurrence nor he has been made an accused in the aforesaid excise case. Lastly, it is submitted that no recovery has been effected from the toto vehicle in question, hence the same is not liable to be confiscated.

4. *Per contra*, the learned APP for the Respondent-State has though vehemently opposed the prayer of the petitioner for release of the toto vehicle in question, however has not denied the fact that the FIR in question has been lodged under Section 37 of the Bihar Prohibition and Excise (Amendment) Act, 2022 & no recovery has been made from the toto vehicle in question.

5. We have heard the learned counsel for the parties and gone through the materials on record. At this juncture, we may gainfully refer to Section 30 and 37 of the Bihar Prohibition and Excise (Amendment) Act, 2018 (hereinafter referred to as "the Act, 2018), which are reproduced hereinbelow:-

*"**30.** Penalty for unlawful manufacture, import, export, transport, possession, sale, purchase, distribution, etc. of any intoxicant or liquor.-Whoever, in contravention of any provision of this Act or of any rule, regulation, order made, notification issued thereunder, or without a valid license, permit or pass issued under this Act, or in breach of any condition of any license, permit or pass renewed or authorisation granted thereunder-*

(a) Manufactures, possesses, buys, sells, distributes, collects, stores, bottles, imports, exports, transports, removes or cultivates any intoxicant, liquor, hemp; or

(b) Constructs or establishes or works in any manufactory, distillery, brewery or warehouse; or

(c) Manufactures, uses, keeps or has in his possession any material, utensil, implement or apparatus, or uses any premises, whatsoever, for the purpose of manufacturing any intoxicant or liquor; or

(d) Manufactures any material or film either with or without the State Government logo or logo of any State or wrapper or any other thing in which liquor or intoxicant can be packed or any apparatus or implement or machine, for the purpose of packing any liquor or intoxicant; or

(e) Removes any liquor or intoxicant from any distillery, brewery, warehouse, other place of storage licensed, established, authorized or continued under this Act; or

(f) Manufactures, possesses, sells, distributes, bottles, imports, exports, transports or removes, any preparation made with or without the use of any intoxicant or liquor, which can serve as an alcohol or a substitute for alcohol and is used or likely to be used or consumed for the purposes of getting intoxicated;

shall be punishable with imprisonment for the term which may extend to life and with fine which may extend to ten lakh rupees.

Provided that the punishment:

(a) For the first offence shall not be less than five years imprisonment and fine of not less than one lakh rupees, and

(b) For the second and subsequent offences shall not be less than ten years rigorous imprisonment and fine of not less than five lakh rupees.

*37. **Penalty for consumption of liquor**. Whoever, in contravention of this Act or the rules, notification or order made thereunder-*

(a) consumes liquor or intoxicant in any place; or

(b) is found drunk or in a state of drunkenness at any place; or

(c) drinks and creates nuisance or violence at any place including in his own house or premises; or

(d) permits or facilitates drunkenness or allows assembly of drunken elements in his own house or premises;

shall be punishable,

(1) in case of an offence falling under clause (a) and (b),for the first offence only with fine which shall not be less than Fifty thousand rupees or in lieu thereof sentence for a period of three months imprisonment but for subsequent offence falling under clause (a) and (b), shall be punishable with a term which shall not be less than one year but may extend to five years and with fine, which may extend to one lakh rupees.

(2) In case of an offence falling under clause (c) and (d), with a term which shall not be less than five years but which may extend to ten years and with fine, which shall not be less than one lakh rupees which may extend to five lakh rupees."

6. A bare perusal of the aforesaid provisions of the Excise Act / Rules would show that an offence under Section 30(a) of

the Amendment Act, 2018 is made out only in case the concerned person manufactures, possesses, buys, sells, distributes, collects, stores, bottles, imports, exports, transports, removes, or cultivates any intoxicant, liquor, hemp etc., however in the present case, the offence under Section 30(a) of the Amendment Act, 2018 is not made out, inasmuch as there is no allegation of transporting of any illicit liquor on the said toto vehicle. At best, an offence under Section 37 of the Amendment Act, 2018 may be made out on account of the said Guddu Kumar having consumed liquor / intoxicant, nonetheless the same is yet to be proved.

7. Now coming to Section 56 of the Amendment Act, 2022, we find that the offence regarding transporting of illicit liquor by means of the vehicle in question is required to be made out for confiscation under Section 56 of the Amendment Act, 2022, however in the present case, no allegation has been levelled to the effect that the said Guddu Kumar was transporting any illicit liquor by means of the said toto vehicle in question.

8. In this regard, we may gainfully refer to a judgment rendered by a coordinate Bench of this Court in the case of ***Sunaina vs. State of Bihar & Others***, reported in ***2024 SCC Online Pat. 851,*** paragraphs no. 24 to 28 are reproduced herein

below:-

> *"**24.** It is also pertinent to note that in the light of various pronouncements of this Court, Bihar Government has issued **letter dated 07.02.2020 bearing Letter No. 13/HC-06-55/2020-670.** The letter has been written by Additional Chief Secretary, Home Department cum Prohibition, Excise and Registration Department to all District Collectors, Police Officers and Excise Officers. By this letter, the Government has clearly stated in para-2 of the letter that as per direction of this Court, such vehicle, from which no liquor has been recovered, will not be confiscated. In para-3 of the letter, the Government has stated that when the vehicle was being driven by the driver in drunken condition but no liquor has been recovered from the vehicle, only the driver would be prosecuted under the Bihar Prohibition and Excise Act, 2016.*
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> ***25.** Coming to the case at hand we find that on 17.09.2020, the accused Satyendra Kumar and Sunil Yadav were allegedly riding the motorcycle in question and on search 13.9 liter illicit liquor was seized/ recovered from the bag kept by the pillion rider, Sunil Yadav in his hand. There is no allegation, as emerging from the FIR, that the contraband was kept/concealed in any part of the motorcycle in question to carry it. In such situation, it would be erroneous to hold that the motorcycle was used to carry the contraband. The word "use" cannot be interpreted liberally giving expansive meaning. It has to be interpreted strictly as it has penal*

consequences. Even the object and scheme of the Bihar Prohibition and Excise Act does not warrant expansive interpretation. At most, the persons who were found in illegal possession of the contraband may be prosecuted for offence as committed under the Act.

26. *We also find that against the petitioner/owner of the vehicle there is no allegation of her direct or indirect involvement in commission of the alleged offence. That is why she has not been made accused in the criminal case registered by the police.*

27. *In view of the aforesaid facts and circumstances of the case, we find that the twin prerequisites for seizure and confiscation of a vehicle under the Bihar Prohibition and Excise Act, 2016 - use of the vehicle in carrying/transporting the liquor or intoxicant and the consent or connivance of the owner of the vehicle in commission of the offence-are not fulfilled. Consequently the vehicle in question is not liable to be seized and confiscated under the Act.*

28. *Hence, the impugned order is arbitrary and hit by Article 14 of the Constitution. It is also violative of Constitutional right of the petitioner to hold property as provided in Article 300 A of the Constitution, which prohibits any deprivation of property without authority of law. The Bihar Prohibition and Excise Act no way authorises the official to seize or confiscate the motorcycle in the alleged facts and circumstances of the case. Hence, the seizure and confiscation of the motorcycle in question is without any authority of law.*

The confiscation order, is accordingly liable to be quashed. The petitioner, whose constitutional right to property has been violated, is entitled to adequate compensation. He is also entitled to compensation on account of expenditure and harassment in course of forced litigations."

9. We may also like to mention here that the petitioner had filed a petition before the Ld. Court of Special Excise Judge-I, Jehanabad for release of the vehicle in question, however the said petition has been rejected, vide order dated 5.12.2025 on the ground of bar of jurisdiction under Section 60 of the Bihar Prohibition and Excise Act, 2016, as amended up to date with respect to making any order with regard to release of the vehicle in question, inasmuch as the Ld. Collector has been empowered to release the vehicle in question under Section 57B of the Act, 2016, as amended up to date.

10. We have heard the learned counsel for the parties and find that since the vehicle in question was not being used to transport any illicit liquor, no offence is made out under the provisions of Section 30(a) of the Amendment Act, 2018. Thus, in case the vehicle was not being used for carrying illicit liquor, the same cannot be confiscated under Section 56 of the Amendment Act, 2022. Therefore, in view of the law laid down by a coordinate

Bench of this Court in the case of ***Sunaina*** *(supra)* and considering the facts and circumstances of the present case as also for the foregoing reasons, we find that the toto vehicle in question is required to be released in favour of the petitioner, subject to him producing documents, showing his ownership of the said toto vehicle in question, however subject to such conditions, as may be imposed by the Ld. Court of Special Excise Judge-I, Jehanabad in connection with Ghoshi P.S. Case no. 507/2025.

11. In view of the aforesaid, we grant liberty to the petitioner to file appropriate application before the Ld. Court of Special Excise Judge-I, Jehanabad in connection with Ghoshi P.S. Case no. 507/2025 for imposition of such conditions as may be deemed fit and proper in order to ensure that the toto vehicle in question may be produced before the concerned Court as and when required, in view of the aforesaid FIR being also registered under Section 281, 125(a) and 125(b) of the Bhartiya Nyaya Sanhita, 2023. It is needless to state that in case appropriate petition is filed by the petitioner within a period of two weeks from today before the Ld. Court of Special Excise Judge-I, Jehanabad in connection with Ghoshi P.S. Case no. 507/2025, the Ld. Court of Special Excise Judge-I, Jehanabad

shall impose such conditions as may be deemed fit and proper for securing the vehicle as and when required, by passing appropriate orders within a period of two weeks, thereafter.

12. The petitioner shall, thereafter approach the Ld. Collector, Jehanabad along with the said order to be passed by the Ld. Court of Special Excise Judge-I, Jehanabad in connection with Ghoshi P.S. Case no. 507/2025, whereupon subject to the petitioner complying with such conditions as have been fixed, the toto vehicle in question shall be released in favor of the petitioner within a period of two weeks, thereafter subject to the Ld. Collector, Jehanabad being satisfied about the ownership of the petitioner regarding the vehicle in question.

13. The writ petition stands disposed off on the aforesaid terms.

(Mohit Kumar Shah, J)

(Arun Kumar Jha, J)

Ajay/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	10.04.2026
Transmission Date	NA