IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5044 of 2026

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Sonu Kumar Rai S/o Bhageshwar Ray, Resident of Vill.-Gangoi, P.O.-Shyamkauria, P.S.-Ishuapur, Dist.-Saran at Chhapra.

... ... Petitioner

Versus

1. The State of Bihar through its Principal Secretary, Excise Department, Government of Bihar, Old Secretariat, Patna.
2. The District Magistrate, Saran at Chhapra.
3. The Senior Superintendent of Police, Saran at Chhapra.
4. The Superintendent of Police, Saran at Chhapra.
5. Deputy Superintendent of Police, Marhaurah II, Dist.-Saran at Chhapra.
6. The S.H.O. Ishuapur, Dist.-Saran at Chhapra.
7. The Investigating Officer, Ishuapur, Dist.-Saran at Chhapra.

... ... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Rananjay Kumar, Advocate Mr. Noumaan Ahmad, Advocate Mr. Sharfraz Ahmad, Advocate
For the Respondent/s	:	Mr. Jitendra Kr. Roy-1, SC 13 Mr. Hitesh Suman, AC to SC 13

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

Date : 13-05-2026

Heard learned counsel for the petitioner and learned counsel for the State.

2. Pursuant to this Court's order dated 12.05.2026, the S.H.O. of the Ishuapur Police Station in the District of Saran at Chapra is present online. This Court has made queries from the

S.H.O. with regard to the seizure and release of the vehicle in question.

3. This writ application has been preferred seeking release of the vehicle in question being Registration No. BR-04AU/9072, Chassis No. MD625AF99R2K34346, Engine No. AF9KR2333518 belonging to the petitioner.

4. It is the case of the petitioner that the vehicle in question was seized by one Heera Kumar Paswan the S.I. of the Police Ishuapur Police Station on 17.12.2025 at about 21:35 hours. It is stated that near the *Kirana* shop in which the police party had conducted the raid, 4 motorcycles were standing, which were seized by police. One of the motorcycles was this TVS rider. Three persons were apprehended by police and three motorcycles, from which altogether 5 litres 400 ml of liquors were seized, were also seized by police. In the motorcycle belonging to this petitioner no liquor was found, therefore, the motorcycle of the petitioner was not liable to be seized. It is submitted that Section 56 of the Bihar Prohibition and Excise Act provides for confiscation of certain items. Under sub-section 2 of Section 56, confiscation of the vehicle seized in connection with the transportation of the liquor is permissible, but a vehicle which is not found transporting liquor, the police official would not be justified in seizing the said vehicle.

Reference in this regard has been made to the judgment of Hon'ble Division Bench of this Court in the case of **Sunaina @ Suneina versus State of Bihar and Ors.** reported in **2024 (3) BLJ 163**.

5. Learned counsel submits that when the petitioner challenged the seizure of the vehicle and prayed for release by filing this writ application, in a hurry and hot haste, S.H.O. of the police station released the vehicle in favour of the petitioner during the pendency of the writ application. This was done immediately after this Court called upon the respondents to file counter affidavit with a clear observation that if the seizure is found to be illegal, the S.H.O. of the concerned police station may be liable to pay cost and compensation for the same. It is submitted that even at this stage, the police officer seems to have acted in haste as even without any order of the competent court of law or the authority as envisaged under the Bihar Prohibition and Excise Act, 2016, the vehicle has been released. This has been done only to save their skin as the police officials found themselves in a wrong box, they were aware that seizure of the vehicle will be held illegal, they could pre-empt that for unlawful seizure of the vehicle they may have to face the consequences.

6. Learned counsel for the State has submitted that the vehicle in question was seized when it was parked near the *Kirana* shop. The S.I. of the Police Heera Paswan brought the vehicle to the police station, but there is no denial of the fact that from the vehicle in question no alcohol/liquor was seized.

7. Learned counsel submits that when the present S.H.O., Mr. Gaurav Kumar, joined in the month of April, 2026, he got the verification of the vehicle done through the District Transport Office. The vehicle in question not being involved in transportation of liquor, on obtaining order from the Inspector, the vehicle has been released in favour of the petitioner. The S.H.O. of the Ishuapur Police Station, who is present online, has admitted that since the seizure of the vehicle, till his joining in the month of April, 2026, neither the verification of the ownership of the vehicle was done nor any step was taken otherwise to submit a report to the Court/competent authority showing that the vehicle is not involved in transportation of the liquor.

<u>Consideration</u>

8. Having heard learned counsel for the petitioner and State as also the S.H.O. of the Ishuapur Police Station, we find that there is an admission on the part of the respondents that vehicle in question was seized when it was standing parked near the *Kirana* shop. The vehicle was not carrying any liquor, therefore, under the provisions of the Act of 2016, it was not liable to be seized much less confiscated.

9. In the case of **Sunaina** (*surpa*) this Court has held as under:-

> *"20. The first and foremost thing, which emerges from the aforesaid discussion of the statutory provisions, is that no vehicle can be seized or confiscated without its use in commission of any offence under the Bihar Prohibition and Excise Act, 2016. Under Section 30 of the Act, transport of illicit liquor or intoxicant is an offence and in commission of such offence, a vehicle can be used. As such, use of the vehicle in transport of illicit liquor/intoxicant is sine qua non for its seizure and confiscation. It also emerges that just use of the vehicle to carry intoxicant or liquor is also not sufficient for its seizure and confiscation. The involvement or connivance of the owner of the vehicle in such illegal use of the vehicle is also an essential prerequisite for confiscation of the vehicle or imposing any penalty for release of the vehicle. Such view has been consistently expressed by this Court in various judicial pronouncements under writ jurisdiction."*

10. This Court, therefore, finds that seizure of the vehicle in question was wholly illegal and it was done by S.I. of police without there being any basis. The seizure is illegal, not having any sanction of law.

11. This Court further finds that after seizure of the vehicle, it was kept in the police station but without carrying any verification of the ownership of the vehicle and no intimation was given to the owner of the vehicle to inform that the vehicle may be taken away from the police station. This Court finds that even though the seizure list was filed in the Court of learned Jurisdictional Special Exclusive Excise Judge, no report was submitted after carrying investigation, if any, with regard to the involvement of the vehicle. The police officer knew that the vehicle was not carrying any liquor still seizure was made and when this Court called upon the respondent S.H.O. to file a counter affidavit, then in a hurry the vehicle was released in favour of the petitioner.

12. Section 95 of the Bihar Prohibition and Excise Act, 2016, empowers the State Government to make rules to carry out the purposes of the Act. Bihar Prohibition and Excise Rules, 2021 has been made by the Government of Bihar in exercise of its power under Section 95 of the Act. Rule 12A, as inserted in 2022 by way of amendment, provides for release of vehicle, conveyance etc. on payment of penalty. This Rule is applicable to all pending confiscation/auction proceedings by virtue of its Explanation. 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) <u>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</u>. 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) 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 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)

13. It is evident that Rule 12A would not be applicable in the facts of this case.

14. Rule 12A of the Rules of 2021 provides that when any vehicle, conveyance, vessel, animal etc. has been seized by any police or excise officer under the Act 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. Proviso to Rule 12A states that when 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.

15. A bare reading of Rule 12A of the Rules of 2021 would show that it is based on a pre-supposition that the vehicle in question has been seized in accordance with law as contained under Section 57B of the Act of 2016. We reproduce Section 57B hereinunder for a ready reference:

> *"**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."

16. On a conjoint reading of Section 57B of the Act of 2016 and Rule 12A of the Rules of 2021, it would be crystal clear that the legislatures have framed the laws with an understanding that no police officer or excise officer shall seize a vehicle if the vehicle is not being used for committing any offence punishable under the Act of 2016. The legislature could not have thought that a police officer while discharging his duties may indulge in misuse of his position and power by taking into possession a vehicle which is not engaged in transportation of liquor. It is only because of this reason, perhaps, no provision has been introduced in the special Statute and the Rules framed thereunder to deal with the present situation.

17. At this stage, we would take a glance over the provisions of law relating to release of seized articles in connection with an offence by a regular Court. Section 457 of the CrPC (now Section 503 of the BNSS) provides the procedures by police upon seizure of property. Section 503 BNSS is being extracted hereunder for a ready reference:-

> "***503. Procedure by police upon seizure of property.*** *(1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Sanhita, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.*
>
> *(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation."*

18. The Act of 2016 has been enacted to enforce, implement and promote complete prohibition of liquor and intoxicants in the territory of the State of Bihar. The Act attempts to provide a uniform law relating to prohibition and regulation of liquor and intoxicants, levy of duty thereunder and punishment for violation of law in the State of Bihar. Section 60 of the Act of 2016 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."*

19. By virtue of Section 60 of the Act of 2016, in the matters relating to release of a vehicle found involved in commission of an offence under the Act of 2016, application seeking release of vehilce cannot be filed in the regular courts under the CrPC/BNSS.

20. We have noticed Section 95 of the Act of 2016 and Rule 12A of the Rules of 2021, (as amended up-to-date). It is evident on reading of Section 60 of the Act of 2016 together with Rule 12A of the Rules of 2021 that where a vehicle is found involved in transportation of liquor and is seized in connection therewith, it would be liable to be confiscated. In such matters, release of vehicle may be allowed only by the competent authority under Rule 12A of the Rules of 2021 on payment of penalty as envisaged under the Rules.

What will be the situation when a police officer seizes a vehicle even as the vehicle is not involved in transportation of liquor but the FIR is registered under the provisions of the Act of 2016?

21. Whether the jurisdiction of the Exclusive Special Excise Court stands ousted in such matters also where the vehicle has, though been seized in connection with a case registered under the Act of 2016 but the police officer finds that the vehicle is not liable to be seized and cannot be recommended for confiscation? To this Court, it appears that where the police officer who seized the vehicle realizes that the vehicle is not liable be seized or detained in connection with the case registered under the Act of 2016, he must act bonafidely and bring it to the notice of the learned Jurisdictional Court i.e. court of Exclusive Special Judge, Excise with a prayer to allow him to release the vehicle in favour of the owner. In such cases where during or after completion of investigation of a case, it is found that the vehicle or any other article seized is not liable to be seized, not recommended for confiscation or is not required to be detained in connection with the case, the learned Exclusive Special Judge, Excise shall be competent to order release of the vehicle or the article as the case may be.

The present case is a perfect example of the circumstance where the vehicle has been seized even as admittedly no liquor was found under transportation in the vehicle. Police has not recommended for confiscation, still the vehicle remained under seizure in the police station. Rule 12A of the Rules of 2021 takes care of only such releases where the vehicle is found involved in commission of an offence under the Act of 2016, on payment of penalty in terms of the scheme of the Rules of 2021. This Court, therefore, finds that a person aggrieved by seizure of the present nature cannot be left remediless and the Court has to take an appropriate view of the matter without doing any violation with the provisions of the special legislation and the Rules framed thereunder.

22. We are of the opinion that Section 60 of the Act of 2016 does not oust the jurisdiction of the Exclusive Special Excise Court in granting release of the vehicle or other articles which are not found involved in commission of an offence under the Act of 2016. The special court is competent to pass an order for release of vehicle or other articles in such cases either on the basis of an application of the police officer informing the court that the vehicle or the other article is not liable to be seized or on an application filed by the aggrieved person bringing it to the notice of the court that his vehicle or the article has been seized even as those are not involved in commission of an offence under the Act of 2016, hence not recommended for confiscation. On such application, the court may call for a report from the police and consider the application. This remedy may be applied for in appropriate cases.

23. In the present case, the S.H.O. of the Isuapur Police Station released the vehicle during pendency of the writ application immediately after this Court called for a response vide order dated 12.05.2026. This Court called upon the S.H.O. to show as to under which provision of law he could exercise his power to release the vehicle. He could not show any power conferred upon him by the statute.

24. This being the position, while allowing the writ application, for unlawful seizure of the vehicle for four months approx, we direct the State of Bihar (Respondent no.1) to pay cost and compensation collectively assessed at Rs. 50,000/- to the petitioner within a period of one month from the date of receipt/production of a copy of this order.

25. In the case of **Lucknow Development Authority vs. M.K. Gupta** reported in **(1994) 1 SCC 243**, the Hon'ble Supreme Court has observed in paragraph-11 as under:

> "*11….. Public administration, no doubt involves a vast amount of administrative discretion which shields the action of administrative authority. But where it is found that the exercise of discretion was mala fide and the complainant is entitled to compensation for mental and physical harassment then the officer can no more claim to be under protective cover….*"

26. Dealing with the afore-mentioned principle of accountability, the Hon'ble Supreme Court has held in the case of **Delhi Airtech Service Private Limited and Anr. vs. State of Uttar Pradesh and Anr.** reported in **(2011) 9 SCC 354** in paragraph nos. '215' and '218' as under:

> "*215…. The principles of public accountability and transparency in State action are applicable to cases of executive or statutory exercise of power, besides requiring that such actions also not lack bona fides. All these principles enunciated by the Court over a passage of time clearly mandate that public officers are answerable for both their inaction and irresponsible actions. If what ought to have been done is not done, responsibility should be fixed on the erring officers; then alone, the real public purpose of the answerable administration would be satisfied.*"
>
> *218. Principles of public accountability are applicable to such officers/officials with all their rigour. Greater the power to decide, higher is the*

> *responsibility to be just and fair. The dimensions of administrative law permit judicial intervention in decisions, though of administrative nature, which are ex facie discriminatory. The adverse impact of lack of probity in discharge of public duties can result in varied defects, not only in the decision making process but in the final decision as well. Every officer in the hierarchy of the State, by virtue of his being "public officer" or "public servant" is accountable for his decisions to the public as well as to the State. This concept of dual responsibility should be applied with its rigours in the large public interest and for proper governance.*"

27. Following the aforesaid principles, the Patna High Court has held in the case of **K.K. Pathak @ Keshav Kumar Pathak Vs. Ravi Shankar Prasad and Others** reported in **2019 (1) PLJR 1051**, that whenever State is saddled with cost and compensation for the misuse of power by the executives of the State, such cost and compensation should be realized from the erring officials. The public exchequer cannot be burdened by directing payment of money without realizing the same from the officers whose misuse of power has resulted in imposition of cost and compensation against the State. The order of this Court in case of **K.K. Pathak @ Keshav Kumar Pathak** (*supra*) was challenged before the Hon'ble Supreme Court in SLP (Crl) No. 003566/2019, however, no interference was made with the order.

28. We, therefore, direct that the cost and compensation of Rs.50,000/- shall be realized from the erring officials in accordance with the law.

29. Accordingly, this application is allowed.

(Rajeev Ranjan Prasad, J)

(Soni Shrivastava, J)

anand/prachi/-

AFR/NAFR	AFR
CAV DATE	NA
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