IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5530 of 2026

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Rajesh Kumar Son of Ramakant Sharma, Resident of Lari, P.S. Arwal, District Arwal, Bihar-804421.

... ... Petitioner

Versus

1. The State of Bihar
2. The Secretary, Excise and Prohibition, Government of Bihar, Patna.
3. The Commissioner, Excise and Prohibition, Government of Bihar, Patna.
4. The Assistant Commissioner, Excise and Prohibition, Government of Bihar, Patna.
5. The Station House Officer, Gardanibagh Police Station, Patna.

... ... Respondents

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Appearance :

For the Petitioner/s	:	Mr. Shashi Sharma, Advocate
For the Respondent/s	:	Mr. Jitendra Kr. Roy-1, SC 13
		Mr. Hitesh Sumar, AC to SC 13

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
and
HONOURABLE JUSTICE SMT. SONI SHRIVASTAVA

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

2 15-05-2026 Heard learned counsel for the petitioner and learned counsel for the State.

2. The petitioner in this case is aggrieved and dissatisfied with the communication as contained in Memo No. 111 dated 11.03.2026 issued by the Assistant Commissioner, Excise, Patna in Confiscation Case No. 160/2025-26.

3. By the impugned communication, the petitioner has been informed, the owner of the vehicle in question, to get his vehicle released on payment of 11% of the value of the vehicle i.e., Rs.73,150/- failing which the vehicle shall be subjected to acquisition and auction sale.

4. Learned counsel for the petitioner submits that the petitioner is the owner of the vehicle, but he was not present in the vehicle when it was intercepted and from the rear seat of the vehicle 180ml of 8 PM tetra packs of “Blend of Scotch and Indian Grain Whisky” were allegedly recovered. It is submitted that the vehicle was being driven by one Rajnish Kumar, who happened to be a friend/distant relative of the petitioner and on his request the petitioner had given him the vehicle for temporary use.

5. Learned counsel submits that considering the meager quantity of liquor, vehicle may be ordered to be released without payment of penalty. Her submission is that since the petitioner is not involved in the alleged offence and the vehicle was given to his friend in good faith, he may not be made liable for payment of penalty.

6. On the other hand, learned counsel for the State submits that unlike a commercial vehicle when the vehicle is given to a driver to transport commercial goods from one State to another or from one place to another covering long distance, it is a case in which a private vehicle has been given to a friend or relative, who was driving the vehicle and in course of that use liquor has been found in the vehicle. Admittedly, the liquor was found in the vehicle therefore, the vehicle is liable to be seized and proceeding towards confiscation of the vehicle has to take place.

7. It is submitted that no fault may be found with the communication as contained in Memo No. 111 dated 11.03.2026, because a bare reading of Rule 12A of the Bihar Excise and Prohibition Rules, 2021 (as amended up-to-date) would show that there cannot be a penalty less than 10% of the valuation of the vehicle. Learned counsel submits that although the petitioner relies on the Co-ordinate Bench judgments of this Court in the case of Deepak Kumar Gupta vs. State of Bihar (CWJC No. 15342 of 2024), it would appear that the said order has been passed saying that the same has been done in exercise of extraordinary writ jurisdiction. However, his submission would be that no mandamus may be issued against the statute. If the rule provides for penalty not less than 10%, this Court in exercise of its writ jurisdiction may not substitute the rule and form an opinion in violation of the statutory provision.

8. We agree with the submissions advanced on behalf of the State. Rule 12A of the Rules of 2021 reads as under:

*"[2][**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.

[3][(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

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2. Ins. By Amdt. Rules 2022, vide Notifn. No. 2458, dated 5.4.2022.

3. Subs. By Amdt. Rules, 2023, vide Notifn. No. 3671, dated 31.05.2023 *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."

9. It is evident on a bare reading of the aforementioned rule that the penalty is required to be determined by taking into consideration various factors, one of which will be the quantum of the liquor recovered from the vehicle, but having said so the provision has made it clear that in no case the penalty shall be less than 10% of the valuation of the vehicle. The manner in which this provision is couched, it has to be taken as a mandatory provision. It would, therefore, not be appropriate to tinker with the provision of law. Considering, however, the entire facts and circumstances, we direct the Assistant Commissioner, Excise, Patna to keep the penalty amount at the minimum and it should not be more than 10% of the valuation of the vehicle. On payment of 10% of the valuation of vehicle, the vehicle in question shall be released in favour of the petitioner on production of documents of ownership.

10. Accordingly, this writ application is disposed of with the aforesaid direction.

(Rajeev Ranjan Prasad, J)

(Soni Shrivastava, J)

anand/prachi/-

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