

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No. 20978 of 2025**

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Arun Kumar Thakur S/o Rajendra Thakur, Resident of Vill-Newari, P.O.-  
Pachbhinda, P.S.-Taraiya, Dist-Saran at Chhapra.

... .. Petitioner/s

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 Superintendent of Police, Saran at Chhapra.
4. The S.H.O. Taraiya, Dist.-Saran at Chhapra.
5. The District Magistrate, Bettiah, West Champaran.
6. The Superintendent of Police, Bettiah, West Champaran.
7. The S.H.O. Nautan, Dist.-Bettiah, West Champaran.

... .. Respondent/s

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**Appearance :**

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|----------------------|---|-----------------------------|
| For the Petitioner/s | : | Mr.Rananjay Kumar, Advocate |
| For the State        | : | Mr. Ajay Behari Sinha, GA8  |

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**CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH**  
**and**  
**HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH)**

**Date : 16-02-2026**

The present writ petition has been filed for release of  
motorcycle of the petitioner bearing Registration No. BR 06 AY  
6607, Chassis No.- MBLHA10CGHHA63890, Engine No.-  
HA10ERHHA63643.

2. The brief facts of the case, according to the petitioner, are that  
the motorcycle of the petitioner (Splendor Plus) bearing  
Registration No.- BR 06 AY 6607 was stolen on 13.09.2024 at  
about 02:00 pm leading to registration of Taraiya P.S. Case No.



369 of 2024 dated 15.9.2024 under Section 303(2) of the Bhartiya Nyaya Sanhita, 2023 (hereinafter referred to as the 'BNS'). It appears that subsequently the said motorcycle was seized in connection with one Nautan P.S. Case No. 231 of 2025 dated 22.05.2025, registered under Section 30(a) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as the 'Act, 2016') against one Bittu Kumar on account of recovery of 7.92 liters of illicit foreign liquor from the said motorcycle.

3. The learned counsel for the petitioner submits that a bare perusal of the counter affidavit filed in the present case on behalf of the Senior Superintendent of Police, Saran would show that the case bearing Taraiya P.S. Case No. 369 of 2024, filed by the petitioner in connection with theft of his motorcycle has been found to be true under Section 303(2) of the BNS during investigation and supervision of the said case by the Investigating Officer, whereafter the final form has also been submitted by the Sub-Divisional Police Officer, Madhaura-2, Saran on 31.01.2026 finding the case to be true against unknown accused persons, however, without any clue. Thus, it is submitted that since the motorcycle of the petitioner was seized in connection with Nautan P.S. Case No. 231 of 2025 under Section 30(a) of the Act, 2016 on 22.05.2025 which is



much later than the day on which the motorcycle of the petitioner was stolen, it cannot be said that either the petitioner was engaged in ferrying of illicit liquor or the petitioner is in any way directly or indirectly involved in the occurrence in question and moreover, he has also not been made an accused in the said excise case FIR. It is further submitted that since the petitioner has got no role to play in the alleged occurrence, he cannot be saddled with the liability of either payment of penalty or confiscation proceedings.

4. *Per contra*, the learned counsel for the respondent-State has though not denied the fact that the motorcycle of the petitioner was stolen, whereafter the same has been seized in connection with an excise case FIR and that the police authorities have also found the case of theft of motorcycle of the petitioner to be true, however it is submitted that the petitioner can avail the facility of filing an application under Rule 12A of the Bihar Prohibition and Excise (Amendment) Rules, 2023 (hereinafter referred to as the 'Rules, 2023') for release of the vehicle upon payment of penalty.

5. We have heard the learned counsels for the parties and gone through the materials on record from which we find that admittedly the petitioner had filed an FIR dated 15.09.2024 in



connection with theft of his motorcycle leading to registration of Taraiya P.S. Case No.369 of 2024 under Section 303(2) of the BNS, however the police could not trace out the same but subsequently, after about nine months, the said motorcycle was seized in connection with Nautan P.S. Case No.231 of 2025 dated 22.05.2025, registered under Section 30(a) of the Act, 2016 on account of recovery of 7.92 liters of illicit liquor.

6. The records would bear it out that the person who was apprehended with the illicit liquor while riding the motorcycle of the petitioner is in no way connected to the petitioner. We also find from the counter affidavit filed by the respondents that no proof has been brought on record regarding the involvement of the petitioner in the alleged crime much less him having any connivance in the alleged occurrence. The learned counsel for the respondents has also not refuted the fact that the FIR filed by the petitioner in connection with the theft of his motorcycle is authentic and lawful, rather it has been submitted that the case filed by the petitioner in connection with theft of his motorcycle has been found to be true by the police upon investigation.

7. At this juncture, we would gainfully refer to the law laid down by a co-ordinate Bench of this Court in the case of *Sunaina vs. State of Bihar & Ors.*, reported in *2024 SCC*



**Online Pat 851**, relevant paragraphs whereof being para nos. 20 to 30 are reproduced herein below:-

*“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.*

*21. It has been held by this Court in Mohammad Basim Akram v. State of Bihar [2022 (6) BLJ 540] that when the driver of a vehicle is found to be carrying some quantity of intoxicant or liquor in the vehicle for his personal consumption without any knowledge of the owner of the vehicle, such vehicle cannot be construed of having indulged in*



*transportation of illicit liquor. The facts of the case was that 8.8 litre illicit liquor was recovered from the cabin of the driver and driver had confessed that he had purchased the contraband for his personal consumption and kept in the cabin.*

*22. There is also a possibility of situation where driver of a motorcycle or car or other vehicles may be carrying small quantity of contraband in his clothes like in pocket of shirt or pant. In such situation also, it would be completely erroneous to hold that vehicle was being used for carrying the contraband. Hon'ble High Court of Kerala in Wilson C.C. v. State of Kerala [2022 Live Law (Ker) 627] has expressed similar view. In that case, a person was driving a vehicle and 0.06 grams of LSD Stamp was recovered from wallet kept in his pocket. **Hon'ble Kerala High Court** held that it could not be said that the vehicle was used for conveyance of the contraband and the vehicle is subject to confiscation. In *Thausif Ahammad Bengre v. State of Kerala* [2018 SCC OnLine Ker 3905] the vehicle was being driven by the driver and 40 grams Ganja was recovered from his possession. In that situation, Hon'ble Kerala High Court held that it is really fallacious to contend that the vehicle was used for carrying the contraband.*

*23. It is relevant to point out that in case of direct involvement of the owner of the vehicle in prohibited use of the vehicle, he is made accused in the criminal*



*case registered by the police. Even in case of his indirect involvement by way of permission for or connivance in use of his vehicle in commission of the offence, he is liable to be accused U/s. 47 of the Act. As such, unless the owner of the vehicle is an accused in the case, the court cannot hold that the owner of the vehicle is directly or indirectly involved in the prohibited use of the vehicle.*

*24. It is also pertinent to note that in the light of various pronouncements of this Court, Bihar Government has issued letter dt. 7.2.2020 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 Govt. 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.*

*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 & 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.*

*29. Hence, the impugned order dated 19.11.2021 passed by District Collector, Gopalganj in Confiscation (Excise) Case No. 700/2020 is quashed. The District Collector, Gopalganj is also directed to release the motorcycle in question forthwith. He is further directed to pay Rs. 1,00,000/- (Rupees One Lac) to the Petitioner towards compensation. The payment of the compensation must be made within **ten days** of the receipt of the order.*

*30. The petition is allowed, accordingly”*

8. We find from the law laid down in the case of **Sunaina**



(supra), that involvement or connivance of the owner of the vehicle in illegal use of the vehicle for ferrying illicit liquor is an essential prerequisite for confiscation of the vehicle or imposing any penalty for release of the vehicle. As far as the present case is concerned, admittedly the counter affidavit filed by the respondent-State does not show that either the petitioner is an accused in FIR bearing Taraiya P.S. Case No.369 of 2024 or he is in any way involved in the alleged occurrence. Moreover, the FIR filed by the petitioner in connection with the theft of his motorcycle has also been found to be true by the police upon investigation, therefore we are of the considered view that since the motorcycle in question was stolen on 13.9.2024, leading to lodging of an FIR for theft of the same bearing Taraiya P.S. Case No.369 of 2024 dated 15.09.2024, however the said motorcycle was subsequently seized in connection with Excise Case FIR bearing Nautan P.S. Case No.231 of 2025, wherein the petitioner has neither been arrayed as an accused nor his involvement or connivance has been found, the motorcycle in question can neither be confiscated nor the petitioner is liable to pay penalty for the release of the said motorcycle, especially in absence of any material to show any direct or indirect involvement of the petitioner/owner of the



motorcycle in question in commission of the alleged offence.

9. Having regard to the facts and circumstances of the case and for the foregoing reasons, we deem it fit and proper to direct for release of the motorcycle in question in favor of the petitioner within a period of one week of receipt/production of a copy of this order before the competent authority/authorized officer subject to verification of the ownership of the petitioner *qua* the motorcycle in question.

10. Accordingly, the present writ petition stands allowed.

**(Mohit Kumar Shah, J)**

**( Sunil Dutta Mishra, J)**

GAURAV S./-

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