

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18561 of 2023

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Sharad Navnath Gange Son of Navanath, R/o - Hanumanmt Mandir, P.O. -
Beed Sangvi, P.S. - Ashti, Dist- Beed, Maharashtra - 414203.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of
Registration and Excise, Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The District Magistrate, Vaishali.
4. The Superintendent of Police, Vaishali.
5. The Additional Sub Divisional Officer, Mahua.
6. That Station House Officer, Patepur Police Station, District - Vaishali.
7. Mr. Joga Ram, Son of Shambhu Ram, Vill- Sarla, P.S. Biakhasar, Distt-
Barmer, Rajasthan.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Deo Prakash Singh
For the Respondent/s : Mr. Madhaw Pd. Yadaw (Gp23)

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
And
HONOURABLE MR. JUSTICE S. B. PD. SINGH
CAV JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. B. PD. SINGH)

Date : 01-09-2025

Heard the parties.

2. The present writ petition has been filed by the
petitioner seeking following reliefs:-

*“(i) For issuance of a writ in the
nature of Certiorari for quashing the*



order dated 20.02.2023 passed in Excise Confiscation Case No. 04/2023 issued under the signature of Respondent No. 5 whereby and where under the truck (container) of the Petitioner bearing Registration No. MH-04JU-0423 was confiscated and a recommendation has been made to Sub Divisional Officer, Mahua for initiating the process of auction without the compliance of the doctrine of principles of natural justice which is inextricable and inseparable part of any punitive and harsh action causing loss of property and livelihood of the Petitioner.

(ii) For directing the Respondents to release the truck (container) of the Petitioner bearing Registration No. MH-04JU-0423 if not auctioned as yet or pay the adequate compensation with interest since the order of confiscation dated 20.02.2023 that has been passed in flagrant violation of the Principles of Natural Justice without serving any notice to the Petitioner.

(iii) For any other relief/ reliefs if the



Petitioner found entitled in the facts and circumstances of the present case.”

3. The brief facts as per F.I.R is that on 26.12.2022, the vehicle (container) of Petitioner (Registration no. MH-04JU-0423) was seized after recovery of 477 litres of Indian made foreign liquor from the vehicle. The seizure list was prepared and Patepur P.S. Case No. 346 of 2022 dated 26.12.2022 was registered under Sections 30(a), 32(2), 41(1) of the Bihar Prohibition & Excise Act, 2016 against the owner and other apprehended accused persons.

4. It is submitted by learned counsel for the petitioner that petitioner is the *bona fide* owner of the truck (container) bearing Registration No. MH-04JU-0423 and the vehicle of the petitioner has been hired by a transport company which was operated through the driver and cleaner. After seizure of the vehicle, the S.H.O, Patepur Police Station vide Memo No. 1347/22 dated 27.12.2022 forwarded the proposal for confiscation of the seized vehicle of the petitioner. On the basis of the aforesaid



proposal, Excise Confiscation Case No. 04 of 2023 was initiated for confiscation of the vehicle of the petitioner and accordingly, vide order dated 20.02.2023, the vehicle of the petitioner was directed to be confiscated and a recommendation has been made to the Sub-Divisional Officer, Mahua to initiate the process of auction of the vehicle of the petitioner. The petitioner was not noticed at the time of initiation of confiscation proceeding and without hearing the petitioner, the vehicle of the petitioner was confiscated and vehicle of the petitioner was recommended to be auction sold. Accordingly, the vehicle of the petitioner was auction sold to one Sandeep Kumar at a throwaway price of Rs. 2.2 lakhs by the order of Sub-Divisional Officer, Mahua, Vaishali vide order dated 29.09.2023.

5. It is further submitted by learned counsel for the petitioner that the vehicle of the petitioner was auctioned by the respondent authorities without even giving any notice to him. The petitioner has given his vehicle on rent to Mr. Joga Ram, son of Shambhu Ram, SARLA, Barmer, Rajasthan and he only came to know about the



seizure of the vehicle after three months of the seizure when agreement holder informed him. The petitioner had submitted form IV to the respondent No. 3 on 28.09.2023 when he was informed that his vehicle has been forwarded for auction without any notice to the petitioner. It is also submitted that the District Transport Officer has not verified the name and address of the petitioner and a mere formality has been done by the confiscating authority by issuing a notice through local newspaper publication. The petitioner lives at Mumbai and the seized vehicle had a national permit. Hence, the respondent authority had erred to issue a notice through local newspaper at Bihar ignoring the fact that petitioner lives at Mumbai which is nothing but a mere formality in negation to the principles of natural justice. During the course of hearing in confiscation case, a report was called for from the District Transport Officer, Vaishali with respect to name and address of the owner of the vehicle which has never been forwarded by the District Transport Officer, Vaishali which suggests that how casually the processes of confiscation and auction of vehicles seized in an Excise Act are being conducted by the



concerned officials in the State of Bihar.

6. *Per contra*, learned counsel for the respondents submitted that vehicle of the petitioner was confiscated and auctioned in a collective confiscation and auction proceedings as per direction contained in Letter No. 633 dated 25.01.2023 issued by the then Additional Secretary, Prohibition, Excise & Registration Department, Government of Bihar to the District Magistrates in Bihar. He further submits that petitioner was not vigilant for his rights and he did not submit the application in Form-IV to get his vehicle released as per Rule 12A of the Bihar Prohibition & Excise Rules, 2021.

7. Before we consider the rival submission of the parties, it would be imperative to refer to the relevant statutory provisions and case laws:-

8. Sections 47, 57B, 58, 61, 92, 93, 95 of the Bihar Prohibition and Excise Act, 2016 and the Bihar Prohibition and Excise Rules, 2021 are relevant statutory provisions in the aforesaid facts and circumstances.



9. **Section 47** provides for liability of the person who is under control of the vehicle knowingly permits it to be used for commission by any other persons of an offence punishable under provision of the Excise Act to punishment in the same manner as if he had himself committed the said offence. It reads as follows:-

"47. Penalty for allowing premises, etc., to be used for commission of an offence:- *Whoever, whether being a licensee under this Act or otherwise, and having the control or use of any house, room, enclosure, space, animal or conveyance, knowingly permits it to be used for commission by any other person of an offence punishable under any provision of this Act, shall be punishable in the same manner as if he had himself committed the said offence."*

10. **Section 57B** as inserted in 2022, by way of amendment, provides that any vehicle used for committing any offence punishable under the Prohibition and Excise Act and having 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. This Section is applicable to all pending confiscation proceedings by virtue of Explanation no. 2. This Section reads as follows:-

"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.

Explanation 1.- *It shall not be a right of the accused to get his conveyance, item or premises released upon payment of the required penalty. The Collector, based upon a report by a police officer or an excise officer, may, for reasons to be recorded in writing, still refuse to release the said conveyance, item or premises and proceed ahead with confiscation and auction/destruction.*

Explanation 2.- *The Collector shall, from the date of this Amendment coming into force, close the on-going confiscation proceedings if the person concerned pays the penalty as notified and release such vehicle, conveyance or premises.*

Explanation 3.- *Such release shall not affect the outcome of trial, if any before the Special Court."*



(Emphasis supplied)

11. **Section 58** of the Act provides for the procedure and conditions for confiscation of the vehicle or conveyance and other things by District Collector or Officer authorized by him. As per Sub-section 1 of Section 58, the officer seizing the vehicle is required to report to the District Collector without any reasonable delay and as per Sub-Section 2 if the Collector is satisfied, as per the report, that an offence under this act has been committed, he is authorized to confiscate the vehicle, but, as per Sub-section 3, only after giving reasonable opportunity to the person concerned for hearing. Section 58 reads as follows:-

"58. Confiscation by District Collector.-(1) Notwithstanding anything Contained in this Act or any other law for the time being in force, where anything liable for confiscation under this Act is seized or detained under the provisions of this Act, the officer seizing and detaining such property shall, without any reasonable delay submit a report to the District Collector who



has jurisdiction over the said area;

(2) On receipt of the report under sub-section (1), the District Collector if satisfied that an offence under this Act has been committed, may, whether or not prosecution is instituted for the commission of such an offence and whether or not a case is pending before any court, order confiscation of such property;

(3) The Collector shall, before passing an order under sub-section (2), give a reasonable opportunity to the person concerned, of being heard;

(4) While making an order of confiscation under sub-section (2), the District Collector may also order that such of the properties which the order of confiscation relates, which in his opinion cannot be preserved or are not fit for human consumption, be destroyed. Whenever any confiscated article has to be destroyed in conformity with these provisions, it shall be destroyed in



the presence of a Executive Magistrate or officer ordering the confiscation or forfeiture, as the case may be, or in the presence of the Excise Officer not below the rank of a Sub-Inspector;

(5) While making an order of confiscation under sub- section (2), if the District Collector is of the opinion that it is expedient in the public interest to do so, he may order the said property or any part thereof to be sold by public auction or dispose of departmentally and proceeds deposited with the State Government,

(6) The District Collector shall submit a full report of all particulars of confiscation to the Commissioner of Excise within one month of such confiscation."

(Emphasis supplied)

12. Section 61 provides that when an order for confiscation of any property, which includes vehicle also, has been passed under section 58 of the Bihar Prohibition



and Excise Act, 2016 and such order has become final, the property gets vested in the State Government free from any encumbrance. Section 61 reads as follows:-

"61. Confiscated articles to vest with the Collector.- When an order for confiscation of any property has been passed under Section 58 and such order has become final in respect of the whole or any portion of such property, such property or portion thereof, as the case may be, shall vest with the State Government free from any encumbrance."

13. **Section 92** provides for departmental appeal against the final orders passed by the authorities under the Act. The order passed by Excise Officer, lower in rank than District Collector, is appealable to District Collector within 60 days, order passed by District Collector is appealable to Excise Commissioner and order passed by Excise Commissioner is appealable to the State Government within 90 days. However, no second appeal is provided against an order passed by Excise Commissioner.



Section 92 reads as follows:-

"92. Appeals.-*(1) All final orders passed by any Excise Officer other than the Excise Commissioner or Collector under this Act, shall be appealable to the Collector within sixty days from the date of the order.*

(2) All final orders passed by the Collector and Excise Commissioner shall be appealable to the Excise Commissioner and the State Government respectively within ninety days from the date of the order complained of. Provided that no second appeal shall lie against an order passed by the Excise Commissioner on appeal.

(3) The State Government may make rules in this behalf."

14. Section 93 provides for departmental revision. The revisional power has been vested with the State Government. Section 93 reads as follows:-

"93. Revision.- *The State Government may, on its own motion*



or on an application made to it, call for and examine the records of any proceeding before any excise officer or any document, including that relating to renewal or refusal of license or grant of permit, pass etc. under this act, for the purpose of satisfying itself as to the correctness and legality of any order passed in, and as to regularity of any such proceeding and may, when calling for such record, direct that the order be not given effect till the pendency of the examination of the record, so called for. After examining the record, the State Government may annul, reverse, modify or confirm such order, or pass such other order as it may deem fit."

15. Under **Section 95** of the Bihar Prohibition and Excise Act, 2016, the Bihar Government is empowered to make rules to carry out the purposes of the Act. Bihar Prohibition and Excise Rules, 2021 has been made by Bihar Government 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) 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 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)

16. The bare reading of Section 56(b) of the Act clearly shows that any vehicle or conveyance can be seized and confiscated under the Bihar Prohibition and Excise Act, 2016 only when the vehicle has been used for carrying any intoxicant or liquor. Section 58(3) of the Act provides that during confiscation proceeding, the owner of



the vehicle has to be given opportunity of being heard. Section 57 B(1) also provides that any vehicle, or other conveyance used for committing any offence punishable under the Act and seized may be released upon payment of penalty. Rule 12-A(2) of the Bihar Prohibition and Excise Rules, 2021 also provides that while imposing penalty under Section 57-B of the Act, the authority concerned is required to give due regard to the involvement of the vehicle owner.

17. 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. 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.

18. 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 made liable to be an accused under Section 47 of the Act. As such, unless the owner of the vehicle is an accused in the case, the court can not hold that the owner of the vehicle is directly or indirectly involved in the prohibited use of the vehicle.

19. 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.

20. Coming to the case at hand we find that on 26.12.2022, the vehicle of the petitioner was seized for recovery of 477 litres of illicit liquor and driver and cleaner were apprehended. Since petitioner was the registered owner of the seized vehicle, he was also made accused, though he was not apprehended at the place of seizure. The vehicle of the petitioner was confiscated on 20.02.2023 without issuing notice to the petitioner as the name and address of the petitioner was never verified from the



District Transport Officer and in a flimsy manner, a notice was published in the local newspaper at Bihar, ignoring the fact that petitioner is the resident of Mumbai. The insurance paper annexed by the petitioner suggests that on 29.09.2023 when the vehicle of the petitioner was auction sold to Sandeep Kumar, son of Dilip Das at a through-away price of Rs. 2.2 lakhs, the insurance value as on the aforesaid date was Rs. 9,47,893/- whereas, on the date and time of seizure of the vehicle i.e. 26.12.2022, the insurance value of the said vehicle was Rs. 21 lakhs (*Annexure-P/C*).

21. This Court vide order dated 19.03.2025 has observed that the official concerned had erred in determining the valuation of the auction of the subject matter and therefore directed the Principal Secretary, Department of Registration and Excise, Patna to register a criminal case against such of those officials. The State of Bihar through the Principal Secretary, Department of Registration and Excise, Bihar, Patna was also directed to deposit a sum of Rs. 21 lakhs in the Registry of this Court within a period of eight weeks from passing of the order.



22. Being aggrieved by the order dated 19.03.2025, the State-Respondents has preferred Special Leave to Appeal (C) No(s). 12926/2025 before the learned Apex Court which was rejected vide order dated 07.05.2025 (*Annexure-R/G*).

23. A counter affidavit has been filed on behalf of the State of Bihar through the Principal Secretary, Department of Registration & Excise, Bihar, Patna stating therein that in pursuance to the direction of this Court vide order dated 19.03.2025, a Demand Draft bearing DD No. 634446 issued by Punjab National Bank amounting to Rs. 21,00,000/-(Twenty One Lakhs) has been issued in favour of the Registrar General, Patna High Court on 12.05.2025. A photocopy of the Demand Draft has been annexed as *Annexure-R/J* of the counter affidavit.

24. We also find that against the petitioner/owner of the vehicle there is no allegation of his direct or indirect involvement in commission of the alleged offence.

25. 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.

26. 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 in no way authorizes the official to seize or confiscate the alleged vehicle in the alleged facts and circumstances of the case. Hence, the seizure and confiscation of the vehicle in question is without any authority of law. The confiscation order, is accordingly liable to be quashed.

27. Since the vehicle (container) of the



petitioner (Registration no. MH-04JU-0423) has already been auction sold, the Registrar General, Patna High Court is hereby directed to release the Demand Draft bearing DD No. 634446 issued by Punjab National Bank amounting to Rs. 21,00,000/-(Twenty One Lakhs) in favour of the petitioner which was issued on 12.05.2025 by the State of Bihar through the Principal Secretary, Department of Registration & Excise, Bihar, Patna.

28. Since there is recovery of 477 litres of Indian made foreign liquor from the vehicle (container) of the petitioner (Registration no. MH-04JU-0423), the petitioner is directed to deposit maximum penal amount of Rs. 5,00,000/-(Five Lakhs) before the concerned authority and submit a receipt of the same before the learned Registrar General, Patna High Court for release of Rs. 21 lakhs in his favour. The amount of Rs. 5 lakhs will be deposited in the fund of government *ex-chequer* by the petitioner within a period of 8 weeks or in alternative, the amount of Rs. 21 lakhs could be arrayed while receiving a sum of Rs. 5 lakhs in favour of the government, remaining



amount of Rs. 16 lakhs in favour of the petitioner.

29. With the aforesaid observations/directions,
the writ petition stands disposed of.

(S. B. Pd. Singh, J)

(P. B. Bajanthri, ACJ)

Shageer/-

AFR/NAFR	AFR
CAV DATE	02/07/2025
Uploading Date	01/09/2025
Transmission Date	N/A

