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**(2020) 09 PAT CK 0131**

**Patna High Court**

**Case No:** Civil Writ Jurisdiction Case No. 7470 Of 2020

Md. Nausad

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

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**Date of Decision:** Sept. 7, 2020

**Acts Referred:**

- Bihar Prohibition And Excise Act, 2016 - Section 30(a), 56

**Hon'ble Judges:** Sanjay Karol, CJ; S. Kumar, J

**Bench:** Division Bench

**Advocate:** Raj Kumar, Vinay Kumar, Kumar Manish, Lalit Kishore

**Final Decision:** Disposed Of

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### **Judgement**

Heard the parties.

Petitioner has prayed for following reliefs:-

1. "For direction to the State respondents to release the Pick-up Van of the petitioner bearing reg. No. BR-34G-7144 (original reg. no. BR-01GC-

6550), engine No.GHD1B-18668, Chassis No.MA1ZN2GHKD1B23688 which was seized in Salkhua P.S. Case No. 39 of 2020 for the offence

punishable u/s 30(a) of Bihar Prohibition and excise Act, 2016 by respondent no.2 in favour of the petitioner.

2. Also for any other relief/reliefs for which the petitioner is entitled in the eye of law."

Informant is a police officer who has alleged in his written complaint that on 8.2.2020 he along with other police personnel were on patrolling duty

when at about 11.10 p.m. he saw a bolero pick-up being driven in a rash manner and on suspicion, said vehicle was chased and the driver of the pick

up van fled away after leaving the vehicle and from search of vehicle, huge amount of illicit foreign liquor was recovered which was seized and FIR

was instituted against the driver and owner of the seized vehicle giving rise to Salkhua P.S. Case No. 39 of 2020 for the offence punishable u/s 30(a)

of Bihar Prohibition and excise Act, 2016 and since there has been recovery of illicit liquor from the seized vehicle, same is liable for confiscation

under Section 56 of the Excise Act.

It is submitted on behalf of petitioner that he is the owner of the seized vehicle which was stolen by unknown thieves on 29.11.2019 for which he has

lodged FIR giving rise to Muffasil (Khagaria)P.S. Case No. 897 of 2019 and same was being used by the miscreants for transportation of illicit liquor

after changing the registration number plate and original registration no. is BR-01GC-6550. However, the engine number and chassis number is the

same.

Petitioner claims to be owner of the seized vehicle and same was stolen on 29.11.2019 for which he had earlier instituted a case as such, petitioner

cannot be held to be responsible for transportation of illicit liquor, however, since the vehicle was used for transportation of illicit liquor same is liable

for confiscation but till date no confiscation proceeding has been initiated.

In the facts and circumstances of the case, the District Magistrate, Saharsa/Confiscating officer, Saharsa is directed to provisionally release the

vehicle of petitioner after due identification of ownership of the vehicle which was stolen and subsequently recovered and seized by the police in

excise case on production of ownership and registration with respect to vehicle in question in his name with two sureties (one local) to the extent of

the value of the vehicle as indicated in the insurance document.

The petitioner while submitting the sureties shall also furnish the following affidavits/undertakings:

(i) That the petitioner shall not indulge in creating any third party right or interest in respect of the vehicle during the pendency of the confiscation

proceeding and shall not alienate the vehicle during this period.

(ii) The petitioner shall furnish an undertaking to produce the vehicle before the confiscating authority as and when required.

(iii) Prior to release of the vehicle, a Panchanama would be prepared wherein the photograph of the vehicle shall be taken and will be certified by the petitioner and same shall be kept on record so that in future if so required, it may be used as a secondary evidence. The petitioner shall furnish an undertaking not to challenge the said Panchanama.

The release shall be allowed within a period of 14 days from the date of submission of the sureties and the undertakings as stated above, which would however be subject to finalization of the confiscation proceeding.

With said observations, this writ petition is disposed of.