

**(2020) 12 PAT CK 0086****Patna High Court****Case No:** Civil Writ Jurisdiction Case No. 9030 Of 2020

Sham Lal Choudhary

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

**Date of Decision:** Dec. 9, 2020**Acts Referred:**

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

**Hon'ble Judges:** Sanjay Karol, CJ; S. Kumar, J**Bench:** Division Bench**Advocate:** Ganesh Prasad Singh, Vikash Kumar**Final Decision:** Disposed Of

### **Judgement**

The proceedings of the Court are being conducted through Video Conferencing and the Advocates joined the proceedings through Video Conferencing from their residence.

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

Petitioner has prayed for following reliefs:-

(A) "To issue appropriate writ, order or direction in the nature of mandamus for release of New Ashok Leyland Tourist Passenger Bus bearing

registration no. UP81CT-4045 having Chassis No. MB1PREHD6KAJJ8794 and Engine No. JWEZ439659 in favour of the petitioner which has been

seized in a very arbitrary manner by respondent Officer-in-Charge, Kanti police station in connection of Kanti P.S. Case No. 613 of 2020 registered

on 05.10.2020 under Section 30(a) of Bihar Prohibition and Excise Act, 2018 showing false recovery 360 ML liquor from tourist passenger bus of the

petitioner.

(B) This Court may adjudicate and hold that without any proceeding of confiscation detention of New Ashok Leyland Tourist Passenger Bus of the petitioner by the respondents under Bihar Prohibition and Excise (Amendment) Act 2018 is illegal in the eye of law.

(C) To grant any other relief or reliefs under the facts and circumstance of the cases under which the petitioner is entitled.

Informant who is a police officer has alleged that on 05.10.2020 while he was on patrolling duty with other police personnel, he received information

from SHO that on a bus bearing Registration No. UP81CT-4045 illicit liquor is being carried and thereafter the bus was stopped and on search 2

bottles containing 360 ml. of foreign liquor was recovered from cabin of the driver. Accordingly, the driver of the bus was arrested, bus and the illicit

liquor were seized giving rise to Kanti P.S. Case No. 613 of 2020 dated 05.10.2020.

It is submitted that petitioner is the owner of the tourist passenger bus having All India Tourist Permit and allegation is recovery of 360 ml. of foreign

liquor from cabin of the driver, for which petitioner cannot be held to be liable and responsible. There are no independent witnesses of search and

seizure and police constables have been made witnesses on seizure memo.

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

the vehicle of petitioner after due identification of ownership of the vehicle on production of ownership and registration documents 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.