

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Writ Jurisdiction Case No. 14374 of 2025**

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Md. Hasmuddeen Ali S/o Md. Shafique Mansuri, R/o Ward No.- 06, Puran Chapra, Post- Puran Chapra, Anchal- Kalyanpur, Thana- Chakia, Puran Chhapra, East Champaran, Bihar- 845426.

... ... Petitioner/s

Versus

1. The State of Bihar through Secretary Excise and Prohibition Department Govt. of Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The District Magistrate, Gopalganj, Bihar.
4. The Superintendent of Police, Gopalganj, Bihar.
5. The Superintendent of Excise, Gopalganj, Bihar.
6. The S.H.O., Kuchaikote Police Station, Gopalganj, Bihar.

... ... Respondent/s

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**Appearance:**

For the Petitioner/s : Mr. Sumit Shekhar Pandey, Advocate

Mr. Masoom Raza, Advocate

Ms. Shruti Singh, Advocate

Mr. Mirza Ahraz Baig, Advocate

For the Respondent/s : Mr. AC to Standing Counsel (11)

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**CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH**

**and**

**HONOURABLE MR. JUSTICE ALOK KUMAR PANDEY**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH)**

**Date: 02-02-2026**

The present writ petition has been filed for quashing the order dated 05.01.2024, passed by the learned Court of Sub-Divisional Magistrate, Gopalganj in Sub-Divisional Confiscation (Excise) Case No. 1047 of 2023 whereby and whereunder the motorcycle of the petitioner bearing registration No. N/A, Chassis No. MBLHAR071JHL13627 and Engine No. HAI0AGJHLB2192, has been directed to be confiscated and put



on auction sale.

2. The short facts of the case, according to the petitioner are that his motorcycle bearing Registration No.BR05AE-7596 (Hero Splendor +) having the same chassis and engine number, as aforesaid was stolen in the evening of 09.05.2022 from Puran Chapra Market, leading to him having lodged an FIR for theft of his motorcycle bearing Chakiya P.S. Case No.180 of 2022 dated 10.05.2022, registered under Section 379 of the IPC. The petitioner, subsequently came to know that the said motorcycle has been seized in connection with Kuchaikote P.S. Case No. 470 of 2023 dt. 15.09.2023, registered under Section 30(a) of the Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as “the Act, 2016”) against four accused persons on account of recovery of various quantity of illicit liquor, however from the motorcycle of the petitioner, 11.160 liters of illicit liquor was seized. The confiscation authority had then initiated confiscation proceedings, leading to passing of the impugned order dated 05.01.2024.

3. The learned counsel for the petitioner has submitted that since the motorcycle of the petitioner had been stolen much earlier than the day on which the same was seized by the police in connection with excise act case as also the name



of the petitioner does not find place in the FIR bearing Kuchaikote P.S. Case No.470 of 2023, lodged U/s. 30(a) of the Act, 2016, it cannot be said that either there was consent of the petitioner or connivance of the owner of the motorcycle in question, i.e. the petitioner in commission of the offence. It is also submitted that the records would bear it out that the involvement of the petitioner in the illegal use of the motorcycle in question for ferrying illicit liquor has also not been proved. Thus, it is submitted by relying on judgments dated 30.01.2024, passed 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* and the one dt. 18.11.2025, passed in the case of *Ali Ashraf Siddique vs. The State of Bihar & Ors. (CWJC No.16421 of 2025)* that if the involvement of the owner of the vehicle is not there in commission of the alleged offence of transportation of illicit liquor and in such illegal use of the vehicle, the vehicle cannot be subjected to a confiscation proceeding.

4. *Per contra*, though the learned counsel for the respondent-State has vehemently opposed the prayer of the petitioner for quashing of the order dated 05.01.2024, however he has not been able to deny the fact that since the ownership of



the motorcycle in question could not be ascertained, the notice of hearing could not be served upon the petitioner. The learned counsel for the respondent-State has also not been able to show any proof of involvement of the petitioner in the occurrence of recovery of 11.160 liters of illicit liquor from the motorcycle in question and moreover, in the counter affidavit filed in the present case there is no material to show any direct or indirect involvement of the petitioner/owner of the vehicle in commission of the alleged offence.

5. We have heard the learned counsel for the parties and perused the materials on record from which it is apparent that the petitioner had filed an FIR on 10.05.2022 bearing Chakiya P.S. Case No.180 of 2022 under Section 379 of the IPC in connection with theft of his motorcycle bearing Registration No.BRO5AE-7596, however the police could not trace out the same but after more than one year, the said motorcycle was seized in connection with Khuchaikote P.S. Case No.470 of 2023 dated 15.09.2023 registered under Section 30(a) of the Act, 2016 on account of recovery of 11.160 liters of illicit liquor and the person arrested from the spot, who was driving the said motorcycle is also in no way connected to the petitioner as is apparent from the records. We further find from the counter



affidavit filed by the respondent-State 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 not refuted the fact that the FIR filed by the petitioner in connection with the theft of his motorcycle is authentic and lawful. In fact, the respondent-State has admitted that since the ownership of the vehicle in question could not be traced out, personal notice could not be served upon the actual owner of the vehicle, hence on the ground of violation of the principles of natural justice and non-grant of reasonable opportunity alone, the impugned order dated 05.01.2024 is fit to be set aside.

6. 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* (Supra), 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 LiveLaw (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”

7. 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 Kuchaikote P.S. Case No.470 of 2023 or he is in anyway involved in commission of the alleged offence and moreover, there is no whisper about the FIR filed by the petitioner regarding his motorcycle having been stolen being not authentic or unlawful. Therefore, we are of the considered opinion that if the vehicle in question was stolen on 09.05.2022, leading to lodging of an FIR for theft of the same bearing Chakiya P.S. Case No.180 of 2022 dated 10.05.2022, which was though seized in connection with Excises Act case bearing



Kuchaikote P.S. Case No.470 of 2023, wherein the petitioner has not been arrayed as an accused, the confiscating authority could not have passed the order of confiscation, especially in absence of any material to show any direct or indirect involvement of the petitioner/owner of the vehicle in commission of the alleged offence. The present case stands squarely covered by the judgment rendered by the Hon'ble Division Bench of this Court in the case of ***Sunaina*** (supra).

8. Having regard to the facts and circumstances of the case and for the foregoing reasons, we set aside the impugned order dt. 05.01.2024, passed by the Ld. Court of Sub-Divisional Magistrate, Gopalganj in Sub-Divisional Confiscation (Excise) Case No.1047 of 2023 and direct for release of the motorcycle of the petitioner, within a period of two weeks from the date of receipt/communication of a copy of this order.

9. The petition stands allowed.

**(Mohit Kumar Shah, J)**

**(Alok Kumar Pandey, J)**

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