

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Miscellaneous No.3655 of 2012**

1. Harendra Singh Son Of Late Krishn Singh @ Ram Lakan Singh  
Resident Of Village- Mudila, Police Station- Kutumba In the District of  
Aurangabad(Bihar)

.... .... Petitioner/s

Versus

1. The State Of Bihar

.... .... Opposite Party/s

**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR  
SRIVASTAVA  
ORAL ORDER**

3 29-02-2012

Counter affidavit is filed on behalf of the Excise  
Superintendent, Aurangabad.

Heard learned counsel for the petitioner as well as  
learned Additional Public Prosecutor for the State and with  
consent of the parties, this petition is being disposed of on  
admission stage itself.

The petitioner has challenged the order dated  
09.09.2011 passed by learned Chief Judicial Magistrate,  
Aurangabad in Excise Case No. 02 of 2011 by which he refused to  
release the vehicle bearing Registration No. BR 2K 780 in favour  
of the petitioner on the ground that confiscation proceeding in  
respect of the aforesaid vehicle is likely to be initiated and  
furthermore, the aforesaid vehicle is required for logical  
conclusion of the trial of the petitioner.

It would appear from the record that Tata Magic

bearing Registration No. BR 2K 780 was seized while in huge quantity spirit was being carried by the aforesaid vehicle.

Being owner of the aforesaid vehicle petitioner filed a release petition before the learned Chief Judicial Magistrate, Aurangabad but the learned Chief Judicial Magistrate, Aurangabad refused the prayer of the petitioner passing impugned order dated 09.09.2011 against which the petitioner has preferred this quashing petition.

It is contended by learned counsel for the petitioner that up-till-now the confiscation proceeding has not been initiated in respect of the aforesaid vehicle and no purpose would be solved by keeping the aforesaid vehicle in the custody of the excise department because the petitioner being owner of the aforesaid vehicle has to pay taxes to the government and if the aforesaid vehicle is kept in the custody of the excise department, no purpose would be solved.

Learned Additional Public Prosecutor appearing for the State submits that no doubt, up-till-now the confiscation proceeding has not been initiated in respect of the seized vehicle but as a matter of fact, after pronouncement of judgment in case, the trial court may direct the excise officials to initiate the proceeding in respect of the aforesaid vehicle in view of Section

77(1) of Bihar Excise Act, 1915.

Having heard the contentions of the parties, I have gone through the record. One thing is very clear that up-till-now the confiscation proceeding has not been initiated in respect of the aforesaid seized vehicle. So, the prayer of the petitioner for release of the aforesaid vehicle cannot be rejected only on the presumption that a confiscation proceeding may be initiated in respect of the seized vehicle.

In view of the aforesaid facts and circumstances as well as submissions of the parties, the vehicle seized in connection with Excise Case No. 02 of 2011 be released in favour of the petitioner after taking proper security bond as well as after verifying the documents relating to the aforesaid vehicle and furthermore, the learned Chief Judicial Magistrate, Aurangabad may fix other conditions, if he thinks fit.

Accordingly, this petition stands disposed of on admission stage itself.

Let this order be communicated to the court of Chief Judicial Magistrate, Aurangabad in connection with Excise Case No. 02 of 2011 through FAX at the cost of the petitioner.

**(Hemant Kumar Srivastava, J)**

SHAHZAD/