

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5049 of 2018

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Diwakar Kumar Singh, Son of Avadhesh Singh, Resident of Village- DeoRarh
Kala, P.S.- Kudra, District- Kaimur at Bhabua.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department, Bihar, Patna.
2. The District Magistrate, Kaimur at Bhabua.
3. The Superintendent of Police, Bhabua.
4. The Officer-in-Charge Kudra Police Station, District- Kaimur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dharmendra Kumar Singh, Advocate
For the Respondent/s : Mr. A.K. Sinha- GA1

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 22-03-2018

This writ petition has been filed for release of a Motorcycle bearing Registration No.BR 45H-7376 Engine No. FFIFH1261338, Chassis No. MD 625 FF 12 HIF 48449, which has been seized in connection with Kudra P.S. Case No. 55 of 2018 registered for the offences under Section 30(a) and 37(1) (2) of the Bihar Prohibition and Excise Act, 2016. It is stated that nothing has been recovered from the possession of the motorcycle in question.

It is common ground that in various cases, identical in nature, pending initiation/ finalization of the confiscation proceedings and criminal case, vehicles have been directed to be released by this



Court on various conditions and we see no reason to make a deviation in the present case.

Keeping in view the aforesaid, it is directed that pending initiation/finalization of the confiscation proceedings and criminal case, the aforesaid vehicle in question shall be released to the petitioner on his furnishing two sureties to the satisfaction of District Magistrate, Kaimur at Bhabua, within a period of one week from the date of his furnishing the sureties and further undertaking to produce the vehicle as and when directed by the authority concerned and not to alienate or deal with the vehicle in question during the pendency of the confiscation proceedings and criminal case so as to cause adverse effect or prejudice to the rights of the State Government.

With the aforesaid, the writ petition stands allowed and disposed of.

That apart, in the confiscation proceedings, the confiscating authority shall take note of the provisions of Section 56 of the Bihar Prohibition and Excise Act, 2016 and record a positive finding after hearing the petitioner as to whether when the petitioner is found or the vehicle is found to be used by a person in drunken condition and no liquor is seized from the vehicle or when the vehicle is not used for transportation of liquor, whether the



provision of Section 56 of the Act will apply. It shall be mandatory for the confiscating authority to decide this issue before passing any order on the confiscation proceedings. The confiscating authority shall consider the provision of Section 56 of the Act, apply his mind and pass a speaking order with regard to confiscation initiated. Without deciding the aforesaid issue as a preliminary issue, further proceedings in the confiscation proceedings shall be prohibited.

We further request the office of the Advocate General to communicate this order to all the District Magistrates in the State of Bihar, who would be mandated to pass an appropriate order in such cases where the vehicle has been confiscated under Section 56 of the Act only on the allegation that the vehicle was being driven in a drunken condition and no liquor was seized from the vehicle nor the vehicle used for transportation or carriage of liquor. The issue shall be decided by each and every District Magistrate before proceeding in the confiscation proceedings where the allegation is about the vehicle being driven in a drunken condition and no liquor was found from the possession of the vehicle.

It shall be the duty of the Advocate General to communicate this order to each and every District Magistrate and inform the Registrar General of this Court. In spite thereof, if we find that the



District Magistrates are passing confiscation order without addressing this issue first, we may consider initiating contempt proceedings against the concerned District Magistrate.

(Rajendra Menon, CJ)

(Rajeev Ranjan Prasad, J)

Sunil/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	22.03.2018
Transmission Date	

