

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Writ Jurisdiction Case No.2436 of 2018**

Arising Out of PS. Case No.-142 Year-2017 Thana- BITHAN BAZAR District- Samastipur

Sanjay Mahto, Son of Krishna Dev Mahto, Resident of Village Monorba,  
Bithan, P.S. Bithan, District- Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department, Government of Bihar, Patna.
2. The Principal Secretary, Excise Department, Government of Bihar, Patna.
3. The District Magistrate, Samastipur.
4. The Superintendent of Police, Samastipur.

... .. Respondent/s

**Appearance :**

For the Petitioner/s : Mr. Sarbottam Kumar Sarkar, Advocate  
For the Respondent/s : Mr. Vivek Prasad (Gp 7)

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**  
**ORAL ORDER**

2      22-11-2018                      This writ application has been preferred seeking release of the Motor Bike bearing registration No. BR34B-8830 which has been seized allegedly in connection with Bithan P.S. Case No. 142 of 2017 registered under Sections 272, 273 of the Indian Penal Code and Sections 30 (a) and 30 (d) of Bihar Prohibition & Excise Act, 2016.

Learned counsel for the petitioner submits that as per the allegations, when the place in question was searched illicit country made liquor and Jawa Gur etc. were seized. So far as the motorcycle is concerned, the motorcycle was found standing near the place of occurrence. In the first information report there is no allegation that any recovery has been made from the



motorcycle in question. Learned counsel for the petitioner has drawn attention of this Court towards paragraph 12 of the writ application wherein it is stated that till date no confiscation proceeding has been initiated against the seized motorcycle as no notice in this regard has been issued to the petitioner who is the owner of the motorcycle.

Seeking release of the vehicle learned counsel submits that for last more than one year the vehicle is lying under open sky in the premises of Police Station and if it is allowed to remain there for any longer time, the whole motorcycle will become a junk and will be of no use. It is also submitted that since no confiscation proceeding is there against the motorcycle, seizure of the motorcycle is nothing but a misuse of power by the Police authorities.

Learned counsel for the State is present.

So far as factual position is concerned, it is not in dispute that the illicit liquor or the Jawa Gur etc. were recovered from the place in question and not from the motorcycle. Learned counsel for the State, however, submits that at this stage he is not aware that any confiscation proceeding has been initiated after filing of the writ application.

After hearing the learned counsel for the petitioner



and the State, this Court is of the considered opinion that in a case where the motorcycle has been seized more than a year back and at the time of filing of the writ application i.e. on 01.10.2018 there is a statement of the petitioner that no notice of confiscation has been issued to him and the said fact remains uncontroverted, the vehicle in question cannot be allowed to remain under seizure. The vehicle has already remained under seizure for more than one year and is lying in the Police Station. The contention of learned counsel for the petitioner that if it is allowed to continue to remain there under open sky it will become a junk seems to be correct and worthy.

In the given facts and circumstance, this Court would direct that pending initiation/finalization of confiscation proceeding of the vehicle in question, the vehicle shall be released in favour of the petitioner on his producing document of ownership and registration in his name with two sureties to the extent of value of the vehicle as indicated in the insurance document. The petitioner shall also furnish an undertaking that he would not indulge in sale or any kind of creation of third party interest with respect to the vehicle and shall produce the same as and when required by the learned court/authority. Since no confiscation proceeding is pending, the surety bond and the



undertakings shall be furnished by the petitioner in the court below where upon being satisfied with the surety bonds the court below shall issue a release order within a week from the date of submission.

This writ application stands disposed off.

**(Rajeev Ranjan Prasad, J)**

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