

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4549 of 2019

Abdul Ali aged about 41 years (M), S/o Kadam Miyan, R/o Vill.- Kaithwali,
P.S.- Mairwa, Distt.- Siwan.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise, Govt. of Bihar, Patna
2. The Principal Secretary Excise, Govt. of Bihar, Patna
3. The District Magistrate, Siwan
4. The Superintendent of Police, Siwan
5. The Excise Superintendent, Department of Excise, Siwan
6. The S. H. O. of Mairwa P.S. Distt.- Siwan

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ajay Kumar Pandey
For the Respondent/s : Mr. Kumar Manish (SC5)

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 29-03-2019

Heard learned counsel for the petitioner and
learned counsel appearing on behalf of the State.

The petitioner prays for provisional release of his
Hero Splendor Pro motorcycle bearing registration No.
BR29N-5625, Chassis No. MBLHA10ASDHF01862, Engine
No. HA10ELDHF01875, which has been seized in
connection with Mairwa P.S. Case No. 221 of 2017 for the
offences punishable under sections 272, 273, 34 of the Indian



Penal Code read along with side provisions under sections 30(a), 37(b), 41(i) of the Bihar Prohibition and Excise Act, 2016.

Learned counsel for the petitioner submits that the recovery of one liter of country liquor is from plastic bag in possession of one Rambabu Singh, who is not the owner of the motorcycle, rather it is the petitioner, who is the owner of the motorcycle. In reference to the First Information Report, he further submits that it does not disclose whether or not Rambabu Singh was riding the motorcycle in question rather it is stated that while two persons were walking down on the road and two persons were on the motorcycle and on seeing the Police Party, all four tried to run away but were apprehended. It is mentioned that all four of them were smelling of liquor. He further in reference to the seizure list mentions that even the seizure list does not disclose whether the recovery is from the motorcycle.

In the circumstances discussed, having heard learned counsel for the parties and taking note of the legal position settled by this Court in the case of Diwakar Kumar Singh Vs. The State of Bihar through the Principal Secretary, Excise Department & Ors. reported in 2018 (3) PLJR 403,



we direct for release of the vehicle in question in favour of the petitioner within a fortnight, on furnishing/production of the document showing the ownership of the vehicle and registration certificate in the name of the petitioner supporting the claim of the petitioner before the Designated Court below because neither the F.I.R. nor the seizure list reflects any reason for proceeding to be continued against the vehicle in question.

Since nothing has been recovered from the vehicle, there is no question of submission of any surety bond in view of the judgment of the Hon'ble Division Bench of this Court.

With this observations/directions above, this writ petition is allowed.

(Jyoti Saran, J)

(Arvind Srivastava, J)

shailendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12/04/2019
Transmission Date	NA

