

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13676 of 2019

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Rajesh Mandal S/o Banarsi Mandal Vill.- Ward No. 40, Chandani Chowk,
Vishnupur, P.s. and Distt.- Begusarai presently C/o Kanhaiya Prasad, Gol
Ghar Park, P.s.- Gandhi Maidan, Distt.- Patna-800001

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department,
Bihar, Patna
2. The District Magistrate Purnea
3. The Superintendent of Police Purnea
4. The S.H.O. Dagarua P.S., Distt.- Purnea

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ram Sumiran Rai
For the Respondent/s : Mr.Kumar Manish (Sc5)

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
and

HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

Date : 20-12-2019

Heard learned counsel for the petitioner and learned
counsel for the respondent.

The present writ application has been filed for release of
four-wheeler white coloured Magic vehicle bearing Registration
No.BR-A-H-9633, in favour of petitioner, which has been seized
in connection with Dagarua P.S. Case No.37 of 2019, registered
for the offences punishable under Sections 272 and 276 of the
Indian Penal Code, 1860 and Section 30(a) of Bihar Prohibition
and Excise Act, 2016, as amended by the Amendment Act 8 of
2018 (hereinafter referred to as 'the Act').



The relief, as prayed for by learned counsel for the petitioner as stipulated in paragraph No.1 of the writ application reads as follows :-

“1. That this application is being filed for release of four-wheeler white colour Magis vehicle bearing Registration No.BR-A-H-9633, Chasis No.445010KSZV04390, Engine No.2751ID05KSZ04489 which belongs to the petitioner and has been seized in connection with Dagarua P.S. Case No.37 of 2019 dated 09.03.2019, for the offence u/s 272 & 273 of the I.P.C. and section 30(a) of Bihar Prohibition & Excise Act.”

The prosecution case as per the written report of Sub Inspector, Md. Akhtar Alam, submitted to S.H.O. Dagarua Police Station is to the effect that on 09.01.2019, during patrolling at NH-31, the police personnel intercepted a white coloured Magic vehicle and from the said vehicle, 276.480 litres of Indian Made Foreign Liquor and 24 litres of Beer were recovered, leading to registration of Dagarua P.S. Case No.37 of 2019 dated 09.03.2019 for the offence punishable under Section 272 & 273 of the I.P.C. and Section 30(a) of Bihar Prohibition & Excise Act, 2016.

It is submitted by learned A.C. to S.C.-5 that Confiscation Proceeding being Confiscation Case No.173 of 2019 has been initiated and the same is pending before Respondent No.02, the District Magistrate, Purnea. In such circumstances,



learned counsel for the respondent-State prayed for disposal of this writ application by issuing direction to the concerned respondents to dispose of the confiscation proceeding within a time frame.

Considering the fact that once the confiscation proceeding is initiated, the exercise of discretionary jurisdiction under Article 226 of the Constitution of India having self imposed restriction but can be exercised in exceptional or monstrous situation. Such as when Fundamental Rights have been violated, the impugned order or the proceedings are wholly without jurisdiction or where the principle of natural justice has been violated or vires of the Act is under challenge. Considering the view taken by the Apex Court in the case of **State of Karnataka Vs. K. Krishnan (2000) 7 Supreme Court Cases 80** and in the case of **State of West Bengal and Ors. Vs. Sujit Kumar Rana, (2004) 4 Supreme Court Cases 129**, a Full Bench of this Court in the case of **Baleswar Roy Vs. The State of Bihar and Ors , 2018(4) PLJR 970**, held as follows:

“62. It may, however, be added that Article 226 of the Constitution of India provides power to the High Court to issue writs to any person or authority, including in appropriate cases, any Government, any order or writs (including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of



the rights conferred by Part-III and for any other purpose). Similarly Article 227 of the Constitution of India provides the power of superintendence over all Courts and Tribunals throughout the territories in relation to which any High Court exercises its jurisdiction. The powers of the High Court under Articles 226 and 227 of the Constitution of India cannot be curtailed under any circumstance, as the power flows from the Constitution itself. No statutory bar can affect the power of the High Court under Articles 226 and 227 of the Constitution of India.

63. Despite such wide and untrammelled powers, without any circumscription by external restrictions, the Courts have evolved certain self-imposed limits while exercising these powers. The High Courts, normally, would not go beyond justified inhibitions under any Statute except where there is a complete jettisoning of rule of law or under exceptional circumstances which demand timely judicial interdict. This inhibition is basically ordained, keeping in mind that there is a national weal behind any valid piece of Legislation incorporating and inhering in itself the social objective behind any Legislation. Though, no limitations or fetters have been put on the powers of the High Court under Articles 226 and 227 of the Constitution of India, as the High Courts perform as sentinel on the qui-vive, but such power is not to be exercised casually and without coming to the conclusion that non-exercise of such power would lead to positive injustice. Times without number, it has been held by the High Courts that



only under condition of a person establishing that substantial injustice has or is likely to ensue, such extraordinary powers can be exercised. It needs no adumbration by this date that the plenary powers of the High Court have only to be exercised in the interest of justice.

64. Thus, an order of release may be passed under Article 226/227 of the Constitution of India, even pending confiscation proceedings, but only when it is established before the Court that the procedure prescribed and the law in that regard has been completely flouted and that there is complete violation of the procedure prescribed for confiscation, viz., notice to the offender before confiscation, allowing him opportunity of giving written representation and affording hearing on the issue to him and that such injustice cannot be remedied without the exercise of the extraordinary power.

65. Needless to state that under Article 226 of the Constitution of India, the Court will not go into the disputed question of facts.

66. Thus, the powers directing for release of the vehicles or goods, during the pendency of the confiscation, can only be sparingly exercised under monstrous situations and circumstances when injustice occurs because of non-fulfillment of the conditions for confiscation.”

Since vehicle in question was seized on 09.03.2019, it is expected from the District Magistrate, Purnea to conclude the



proceeding of the above-mentioned confiscation case and dispose of the same by a reasoned and speaking order within a period of six weeks from the date of receipt / production of a copy of this order.

The petitioner is also expected to appear regularly and participate in the confiscation proceeding.

Accordingly, with the above observation and direction, the present writ application is disposed of.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

sanjeev/-

AFR/NAFR	
CAV DATE	
Uploading Date	09/01/2020
Transmission Date	

