

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13566 of 2019

=====

Mundan Devi,, aged about 46 years, Female, W/o late Umesh Ram, R/o Near
Mona Cinema , Bakarganj, Bankipore, P.S. Gandhi Maidan, Distt. Patna.
... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Registration, Excise and Prohibition Department, Bihar, Patna.
2. The Collector-Cum-District Magistrate, Patna.
3. The Excise Commissioner, Patna.
4. The Senior Superintendent of Police, Patna.
5. The Superintendent of Police, Patna.
6. The Superintendent of Excise, Patna.
7. The Officer in Charge of Gardani Bagh Police Station, Patna.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.Nityanand Kumar, Advocate
For the Respondent/s : Mr.Vivek Prasad (GP7)

=====

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

and

HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

2 25-09-2019 Heard Sri Nityanand Kumar, learned counsel for the
petitioner and learned AC to GP-7.

The present writ petition was filed on 4th July, 2019 after
serving copy of the same in the office of learned Advocate
General, Bihar on 25.06.2019, however, till date no counter
affidavit has been filed.

The petitioner, who is lady claiming to be registered
owner of a Motor Cycle, i.e. Suzuki Jiksar bearing Registration
No.BR01CH0309, Chassis No.MB8NG4BAKE8109927 and
Engine No.BGA1109382, has approached this Court invoking writ
jurisdiction of this Court under Article 226 of the Constitution of



India with a prayer to direct the respondents to release her motorcycle, which has been seized in connection with Special Case No.11445 of 2018 arising out of Gardani Bagh P.S. Case No.542 of 2018 registered for the offence under Section 420 of the Indian Penal Code, Section 11 of Bihar Bengal Gambling Act and Section 30(a) of the Bihar Excise and Prohibition Act, 2016.

By way of referring to F.I.R., learned counsel for the petitioner submits that as such from the motorcycle in question, nothing was recovered, however, the same was seized since it was found parked at the place where number of accused persons were assembled who were gambling. From the place about 1 liter 15 ml. of Indian made foreign liquor was shown to be recovered. Besides arresting some accused persons, the motorcycle of the petitioner has also been seized. The seizure was made on 01.12.2018 and since thereafter till the date of filing of the writ petition, the petitioner having no information regarding initiation of confiscation proceeding. He submits that considering the fact that there was no recovery from the motorcycle and there was no reason for seizure of the same which has been seized and after seizure it is lying in the open sky under the custody of the respondents, a prayer has been made to release the vehicle forthwith. It has been argued that if the order for immediate release of the vehicle is not passed, there is every possibility of irreparable



damage of the vehicle in question.

Learned State counsel even in absence of counter affidavit has opposed the prayer for release of the motorcycle. However, the fact has not been disputed that from the motorcycle, there was no recovery. Since it has already been held by a Division Bench of this Court that in a case in which there is no recovery of liquor or intoxicant from the vehicle, under Section 56 of the Bihar Prohibition and Excise Act, no confiscation can be initiated, certainly, there cannot be a reason for seizure of the vehicle.

Accordingly, the respondents are directed to release the motorcycle of the petitioner on production of the original documents. The respondents are also directed to release the vehicle on production of only original documents immediately on the date the petitioner approaches the authority concerned.

The writ petition stands disposed of.

(Rakesh Kumar, J)

(Anjani Kumar Sharan, J)

Nasimul/Devendra

U			
---	--	--	--

