

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13792 of 2019

Md. Naushad, aged about 36 years (Male), Son of Md. Zubair Resident of Kaluha, Kolhua, Muzaffarpur, Bakhra, Bihar, - 843101

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Excise and Prohibition Department, Government of Bihar, Patna.
2. The District Magistrate-Cum-Collector, Hajipur, Vaishali.
3. The Superintendent of Police, Hajipur, Vaishali.
4. The Excise Superintendent of Police, Hajipur, Vaishali.
5. The Officer-in-Charge, Sarai, P.S. in the district of Vaishali.

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Abhishek Kumar, Adv.
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 26-09-2019 Heard Sri Abhishek Kumar, learned counsel for the petitioner and learned AC to Govt. Pleader no.7.

The petitioner, invoking writ jurisdiction of this Court under Article 226 of the Constitution of India, has made a prayer for directing the respondents to release his Motorcycle, bearing Registration No. BR-06BU-9159, Chassis No. ME1RE3529J0059254, Engine No. E31EE0095060, which has been seized in connection with Sarai P.S. Case No.139 of 2019, registered for offence under Sections 341, 323, 379, 504 of the Indian Penal Code and Section 37(c) of the Bihar Prohibition



and Excise(Amendment) Act, 2018.

It was submitted by learned counsel for the petitioner that from the motorcycle of the petitioner, there was no recovery of liquor, but since the petitioner was found in drunken condition, besides arresting the petitioner, his motorcycle was also seized. He submits that in view of provision of Section 56(b) of the Bihar Prohibition and Excise Act, since there was no recovery of liquor from the motorcycle, same is not liable to be confiscated and, as such, a prayer has been made for directing the respondents to release the motorcycle of the petitioner.

Learned AC to Government Pleader no.7, by way of referring to the facts disclosed in the counter affidavit, has opposed the prayer for release of the vehicle. He has also drawn our attention to the F.I.R., copy of which has been brought on record as Annexure-1 to the petition, and submits that although no recovery of liquor was made from the motorcycle, the petitioner was arrested by the police in drunken condition using said motorcycle in snatching money showing himself as a police officer. The content of the F.I.R. suggests that the petitioner, in drunken condition, had overtaken a four-wheeler vehicle of the informant and after stopping the vehicle of the informant, the



petitioner abused him and also tried to extract money and, as such, besides inserting the provision of Bihar Prohibition and Excise Act in the F.I.R., Sections 341, 323, 379, 504 of the Indian Penal Code were also added. Learned State Counsel has further argued that without availing appropriate remedy, the petitioner has directly approached this Court for release of the vehicle.

Thereafter, learned counsel for the petitioner requested for disposal of the present writ petition, so that the petitioner may avail appropriate remedy.

Accordingly, the present writ petition stands disposed of with liberty as indicated above.

(Rakesh Kumar, J.)

(Anjani Kumar Sharan, J.)

nawalkrs/-

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