

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 13959 of 2019

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Babloo Kumar @ Sanjay Kumar, (Male) aged about 35 years, son of Jitan Rai, Resident of Gardanibagh Road No. 15, P.S. Gardanibagh, District-Patna.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Registration Prohibition and Excise, Govt. of Bihar, Patna
2. The District Magistrate cum Confiscation Officer Patna
3. The Senior Superintendent of Police Patna
4. The District Superintendent of Excise
5. The Station House Officer, Gardanibagh P.S. Patna

... .. Respondents

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Appearance :

For the Petitioner/s : Mr. Harsh Anuj, Advocate
For the Respondent/s : Mr. Vikash Kumar (SC-11)
AC to SC - 11

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
and
HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

2. 30-09-2019 Heard Sri Harsh Anuj, learned counsel for the petitioner and learned A.C. to Standing Counsel – 11.

The petitioner, claiming to be registered owner of a motorcycle i.e. Hero Passion Pro, bearing Registration No. BR01CY-0846, Engine No. HA10EVGHF14549 and Chassis No. MBLHA10BSGHF14549, has invoked writ jurisdiction of this Court under Article 226 of the Constitution of India, with a prayer to direct the respondents to release his motorcycle, which has been seized in connection with Gardanibagh P.S.



Case No. 448 of 2018, registered for offence under Section 30(a) of Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as 'Bihar Excise Act').

By way of referring to F.I.R., learned counsel for the petitioner submits that nothing was recovered from the motorcycle, rather recovery of one bottle, containing 180 ml. of Indian make foreign liquor, from each of the persons, which includes petitioner, was shown and thereafter, the petitioner alongwith other was arrested. Besides arresting them, police official also seized motorcycle. He submits in view of Section 56(b) of Bihar Excise Act, since the vehicle was neither used for carrying liquor nor any intoxicant was recovered from the vehicle, the vehicle is not liable to be confiscated and as such, seizure was illegal. He further submits that seizure was made on 02-10-2018 and since thereafter, petitioner's vehicle is lying in open sky, which may be a reason for irreparable damage of the same. Accordingly, a prayer has been made for directing the respondents to release his motorcycle.

Learned A.C. to Standing Counsel - 11, even in absence of counter affidavit, has opposed the prayer for release of the motorcycle, however; he has not disputed the fact that from the motorcycle nothing was recovered nor as per F.I.R., it



was a case that vehicle was being used for transporting liquor or
intoxicant.

In view of the fact that nothing was recovered from
the motorcycle nor it is a case that vehicle was used for
transporting liquor, there is no reason for seizure of the
motorcycle.

Accordingly, the respondents are directed to release
the motorcycle of the petitioner i.e. Hero Passion Pro, bearing
Registration No. BR01CY-0846, Engine No.
HA10EVGHF14549 and Chassis No. MBLHA10BSGHF14549
in favour of the petitioner on production of original documents
of the motorcycle forthwith.

The writ petition stands disposed of.

(Rakesh Kumar, J.)

(Aditya Kumar Trivedi, J.)

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