

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 14754 of 2019

Sanju Devi, aged about 44 years, female, W/o Jawahar Ray, resident of village- Badri Chowk, P.S.- Vaishali, District - Vaishali at Hajipur.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Excise Department, Govt. of Bihar, Patna
2. The District Magistrate cum Collector Vaishali at Hazipur
3. The Superintendent of Police Vaishali at Hazipur
4. S.H.O. Nadi P.S., Patna
5. The Investigation Officer of Nadi P.S. Patna Case No. 121/19, Nadi P.S. Vaishali

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Ram Hriday Prasad, Advocate
For the Respondent/s	:	Mr. Vikash Kumar (Sc11)
		Mr. AC to SC-11

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
and
HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

2. 22-10-2019 Heard Sri Ram Hriday Prasad, learned counsel for the petitioner and learned A.C. to Standing Counsel – 11.

The present petition was filed on 22nd July, 2019 after serving copy of the same in the office of learned Advocate General on 17-07-2019, however; no counter affidavit has been filed till date. The petitioner, who is a lady, claiming to be registered owner of a motorcycle i.e. Dream Yuga Honda, bearing Registration No. BR31AG-2237, Engine No. JC58ET7094519 and Chassis No. ME4JC58ELJT094402, has



invoked 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 Nadi (Patna) P.S. Case No. 121 of 2019 registered for offence under Sections 30(a)/37(c) of Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as 'Excise Act').

Learned counsel for the petitioner, by way of referring to F.I.R., submits that petitioner's motorcycle was being driven by her son namely Ravindra Kumar, who was driving the motorcycle with his companion in a drunken condition, however; nothing was shown to be recovered from the motorcycle or in possession of the son of the petitioner. Only allegation was made that son of the petitioner and his companion were in drunken condition and vehicle was seized. Ofcourse, at the time of seizure, the police did not mention the registration number of the vehicle, but vehicle was already registered, which is evident from Annexure – 2 to the writ petition i.e. copy of 'Certificate of Registration'. Sri Prasad has argued that in view of Section 56 of the Excise Act, since neither there was any recovery from the motorcycle nor it is stated in the F.I.R. that vehicle was being used for transporting liquor, same is not liable to be confiscated. If the vehicle of the



petitioner was not liable to be confiscated under the Excise Act, there was no reason for seizure of the vehicle. Accordingly, he submits that direction can be issued for release of the vehicle forthwith.

Learned A.C. to Standing Counsel – 11 has opposed the prayer for release of the vehicle. Firstly, he has argued that at the time of seizure, neither in the F.I.R. nor in the seizure list, there is reference of registration number. He further submits that son of the petitioner and his companion were in drunken condition and this was the reason that besides arresting them, the vehicle has been seized, however; he was not in a position to dispute the provision of law, as contained in Section 56 of the Excise Act.

Besides hearing learned counsel for the parties, we have also examined the material available on record. Section 56 of the Excise Act is very much clear on the point regarding non-initiation of the confiscation proceeding in a case, in which, from the vehicle, there is no recovery of any liquor or contraband or allegation of using of the vehicle for transporting liquor. *Prima facie*, on the basis of the F.I.R., it is evident that neither there was any recovery from the vehicle nor there is any allegation of using the vehicle for carrying liquor. In such



situation, the Court is of the opinion that in this case, direction can be issued to the authority concerned to release the vehicle forthwith on production of original document(s) relating to vehicle in question by the petitioner, who claims to be owner of the vehicle.

The writ petition stands allowed with a direction to the respondents to release the vehicle in favour of the petitioner on production of original document(s) relating to motorcycle i.e. Dream Yuga Honda, bearing Registration No. BR31AG-2237, Engine No. JC58ET7094519 and Chassis No. ME4JC58ELJT094402.

It goes without saying that if the petitioner approaches the authority concerned for release of the vehicle with relevant documents and a copy of this order, the authority concerned shall release the vehicle forthwith.

(Rakesh Kumar, J.)

(Anjani Kumar Sharan, J.)

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