

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15185 of 2019

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Jitendra Kumar Singh, aged about 30 years (Male), Son of Baban Singh,
Resident of Village-Madhapur, P.S. Nasriganj, District Rohtas at Sasaram

... .. Petitioner/s

Versus

1. The State of Bihar through the Principle Secretary, Excise Department,
Patna, Bihar
2. The District Magistrate, Rohtas at Saram
3. The Superintendent of Police, Rohtas at Sasaram
4. The Officer-in-Charge, Dehri Nagar Police Station

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Dharmendra Kumar Singh, Advocate
For the Respondent/s : Mr.Vikash Kumar (SC11)

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

(Per: HONOURABLE MR. JUSTICE RAKESH KUMAR)

2 25-10-2019 Heard Sri Dharmendra Kumar Singh, learned counsel
for the petitioner and learned AC to SC-11.

The petitioner claiming to be registered owner of a
motorcycle, i.e. Hero Splendor Pro bearing Registration
No.BR24M8366, Chassis No.MBLHA10ASDHA33857 and
Engine No.HA10ELDHA10051 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 vehicle, which has
been seized in connection with Dehri Nagar P.S. Case No.746 of
2017 registered for the offence under Section 37(a)(b)(c) of the



Bihar Excise and Prohibition Act, 2016.

By way of referring to Annexure-1, i.e. FIR which was registered on 24.09.2017, learned counsel for the petitioner submits that on false accusation that petitioner was in drunken condition he was arrested and his motorcycle lying there has also been seized. From the FIR itself, it is evident that no recovery of liquor was made from the motorcycle rather in the FIR, it has been mentioned that the occupant, i.e. petitioner had consumed liquor somewhere else. Though in such situation, the motorcycle of the petitioner was not liable to be seized since in such case, there was no application of Section 56 of the Bihar Prohibition and Excise Act, the motorcycle of the petitioner was illegally seized and proposal was subsequently sent for initiation of confiscation proceeding. Even learned Collector has initiated confiscation proceeding oblivious of the fact that motorcycle in such situation was not liable to be confiscated. He submits that confiscation proceeding is still pending.

Learned AC to SC-11 has not disputed the fact that confiscation proceeding is still pending. He has not disputed the provision of law that under Section 56 of the Act, in a situation where there was no recovery from the motorcycle nor it was a case that the said motorcycle was used for transporting liquor,



same is not liable to be confiscated.

Besides hearing learned counsel for the parties, we have perused the material on record.

The writ petition was filed on 25th July, 2019 after serving copy of the same in the office of learned Advocate General, Bihar on 23.07.2019, however, till date no counter affidavit has been filed.

On going through the material on record, we are of the considered opinion that the motorcycle of the petitioner is liable to be released forthwith without asking the petitioner to furnish any surety. The respondents particularly respondent no.2, the District Magistrate/the Collector, Rohtas at Sasaram is directed to release the motorcycle of the petitioner forthwith only on production of original document of the vehicle by the petitioner unconditionally.

The writ petition stands allowed.

(Rakesh Kumar, J)

(Anjani Kumar Sharan, J)

Nasimul/Devendra

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