

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18034 of 2019

=====

Ashirvad Mishra, aged about 26 years Male Son of Daroga Mishra, Resident of Village Renka Pandeypur P.S. Sikrkaul, District Buxar.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department, Govt. of Bihar, Patna
2. The District Magistrate-cum-Collector, Aurangabad
3. The Superintendent of Police, Aurangabad.
4. The Officer-in-Charge, Aurangabad (M) Police Station, District Aurangabad.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Ashok Kumar Mishra
For the Respondent/s : Mr. Vivek Prasad (GP-7)

=====

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
and
HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

2 17-12-2019 Learned counsel for the petitioner is permitted to file application for deleting certain portion of paragraph no. 1 of the petition within a period of ten days.

The present writ application has been filed for release of Mahindra TUV 300 T6+ Car, which has been seized within 120 days from the date of its purchase in connection with Aurangabad (M) P.S. Case No. 143 of 2017 registered for the offences punishable under Sections 30(a) / 38 of the Bihar Prohibition and Excise Act 2016, as amended by the Amendment Act 8 of 2018 [hereinafter referred to as ‘the Act’]



and under Sections 25(1-B)a / 26 / 35 of the Arms Act.

It is submitted by learned counsel for the petitioner that two vehicles were seized and from the another vehicle in question arms and ammunition were recovered whereas, from the vehicle of the petitioner 5.350 liters of Indian made Foreign Liquor were recovered. Petitioner is the purchaser of the vehicle in question but before it could be registered it was seized, hence, insurance policy and other documents relating to the vehicle in question have been brought on record as Annexure – 1 Series to the present petition.

It was submitted by learned counsel for the petitioner that confiscation proceeding being Confiscation Case No. 526 of 2017 was initiated and In-charge Officer, District Legal Section, Aurangabad vide Memo No. 146 dated 15.01.2018 has issued notice to the F.I.R. named accused persons, however petitioner was not named in the F.I.R.

In view of the fact that confiscation proceeding has been initiated with regard to the vehicle in question of the petitioner although he has not received any notice under Section 58(3) of the Act, hence in view of the law laid down by the Full Bench of this Court in the case of Baleswar Roy and Ors. Vs. The State of Bihar and Ors. 2018(4) PLJR 970 wherein it has



been held that on initiation of confiscation proceeding this Court cannot interfere and exercise jurisdiction under Article 226 of the Constitution of India. Paragraph nos. 62 to 66 read as follows:

“62. It may, however, be added that Article 226 of the Constitution of India provides power to the High Court to issue writs to any person or authority, including in appropriate cases, any Government, any order or writs (including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part-III and for any other purpose). Similarly Article 227 of the Constitution of India provides the power of superintendence over all Courts and Tribunals throughout the territories in relation to which any High Court exercises its jurisdiction. The powers of the High Court under Articles 226 and 227 of the Constitution of India cannot be curtailed under any circumstance, as the power flows from the Constitution itself. No statutory bar can affect the power of the High Court under Articles 226 and 227 of the Constitution of India.

63. Despite such wide and untrammelled



powers, without any circumscription by external restrictions, the Courts have evolved certain self-imposed limits while exercising these powers. The High Courts, normally, would not go beyond justified inhibitions under any Statute except where there is a complete jettisoning of rule of law or under exceptional circumstances which demand timely judicial interdict. This inhibition is basically ordained, keeping in mind that there is a national weal behind any valid piece of Legislation incorporating and inhering in itself the social objective behind any Legislation. Though, no limitations or fetters have been put on the powers of the High Court under Articles 226 and 227 of the Constitution of India, as the High Courts perform as sentinel on the qui-vive, but such power is not to be exercised casually and without coming to the conclusion that non-exercise of such power would lead to positive injustice. Times without number, it has been held by the High Courts that only under condition of a person establishing that substantial injustice has or is likely to ensue, such extraordinary powers can be exercised. It needs no adumbration by this date that the plenary powers of the High Court have only to be exercised in the interest of justice.

64. Thus, an order of release may be



passed under Article 226/227 of the Constitution of India, even pending confiscation proceedings, but only when it is established before the Court that the procedure prescribed and the law in that regard has been completely flouted and that there is complete violation of the procedure prescribed for confiscation, viz., notice to the offender before confiscation, allowing him opportunity of giving written representation and affording hearing on the issue to him and that such injustice cannot be remedied without the exercise of the extraordinary power.

65. Needless to state that under Article 226 of the Constitution of India, the Court will not go into the disputed question of facts.

66. Thus, the powers directing for release of the vehicles or goods, during the pendency of the confiscation, can only be sparingly exercised under monstrous situations and circumstances when injustice occurs because of non-fulfillment of the conditions for confiscation.”

Hence, this Court is not inclined to interfere at this stage, however, the petitioner is given liberty to appear in the aforementioned confiscation proceeding. It is expected from the



learned Collector, Aurangabad to conclude the confiscation proceeding, if it has not been already concluded after giving due opportunity of hearing to all the affected persons / parties in accordance with law, within a period of forty five days from the date of receipt / production of a copy of this order.

With above observation and direction, this writ application stands disposed of.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

praful/-Anil/

U			
---	--	--	--

