

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2197 of 2020

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Bulbul Devi Wife of Devendra Singh @ Devo, Resident of Village-
Madhurapur, P.S.- Teghra, District- Begusarai.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department,
Govt. of Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Superintendent of Police, Begusarai.
4. The District Magistrate-cum-Collector, Begusarai.
5. The Dy. Superintendent of Police, Begusarai.
6. The S.H.O. Teghra Police Station, Begusarai.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bipin Kumar

For the Respondent/s : Mr. Rewati Kant Raman, AC to SC 11

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

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

Date : 18-02-2020

Heard Mr. Vikash Singh, learned Counsel for the
petitioner and Mr. Rewati Kant Raman, learned Assistant Counsel
to Standing Counsel No. 11 for the respondents.

The present writ application has been filed for release of
Hero Splendor motorcycle, bearing Registration No. BR09AC-
4563, which has been seized in connection with Teghra Police
Station Case No. 335 of 2019, registered for the offences
punishable under Sections 30(a) and 32(2) of the Bihar Prohibition



and Excise Act, 2016, as amended by Amendment Act 8 of 2018 (hereinafter referred to as 'the Act').

The relief, as prayed for, stipulated in paragraph 1 of the writ application, reads as follow:-

“Releasing the Motorcycle, Black Hero Splendor bearing Reg. No. BR09-AC-4563; Chasis No. MBLHAW080KHDO7491; Engine No. HA10AGKHD12118, seized in connection with Teghra P.S. Case No. 335 of 2019 dated 20.09.2019 instituted for offence under Sections 30(a)/32(2) of the Bihar Prohibition and Excise Act, 2016, awaiting confiscation.”

The prosecution case got initiated on the basis of the written report of Arjun Prasad, Assistant Sub Inspector of Police, Teghra Police Station, submitted to the Station House Officer, Teghra Police Station, to the effect that on 20.09.2019 at 5 PM, during the vehicle check, one Hero Splendor motorcycle was intercepted and from the vehicle, 1.420 litres of Indian Made Foreign Liquor were recovered, leading to the registration of Teghra Police Station Case No. 335 of 2019.

It is submitted by learned Counsel for the petitioner that the petitioner is the registered owner of the vehicle in question and the certificate of registration of the seized vehicle has been brought on record by way of Annexure-2 to the writ petition. The vehicle,



in question, is rotting under the open sky. It is further submitted that confiscation proceedings has not been initiated. The petitioner is ready to produce the motorcycle in question as and when required by the Court concerned and undertake not to change the shape and nature of the motorcycle in question and also not to transfer or alienate the motorcycle in question.

Mr. Rewati Kant Raman, learned Assistant Counsel to Standing Counsel No. 11, submits that though the matter was adjourned on 31.01.2020 for seeking instruction and file counter affidavit, but in spite of his best efforts, no instruction has been received for filing of the counter affidavit. However, since the liquor was recovered from the vehicle in question and accordingly the same is liable to be confiscated under Section 56 (b) of the Act.

Having heard learned Counsel for the parties and on perusal of the record, it appears that the seizure has been made by the Assistant Sub-Inspector of Police, which is evident from the very opening line of the written report, whereas Section 73(e) of the Act mandates the seizure by an officer not below the rank of Sub-Inspector of Police. Hence the seizure is contrary to the provisions of the Act.

Keeping in view the fact that the First Information Report was registered on 20.09.2019, but admittedly, there is



nothing on record to show that any confiscation proceeding has been initiated, whereas Section 58 (1) of the Act mandates the transmission of a report by the seizing or detaining authority without any reasonable delay to the District Collector having jurisdiction over the area, for anything / property seized which is liable to be confiscated under Section 56 (b) of the Act.

However, it is admitted position that the petitioner was not present at the place of seizure and confiscation proceeding has not been initiated, moreover, more than two lakh cases have been registered in the State of Bihar, and there is no likelihood of the trial being concluded in near future, and allowing the vehicle to turn into junk would ultimately result into waste of public money, as has been deprecated by the Supreme Court, in the cases of **Sunderbhai Ambalal Desai Vs. State of Gujrat and other**, reported in **(2002) 10 SCC 283** and **General Insurance Council and Ors. Vs. State of Andhara Pradesh and Ors.**, reported in **(2010) 6 SCC 768**, we are constrained to direct that the vehicle in question be released provisionally till the conclusion of the trial, if any, to the satisfaction of learned Additional Sessions Judge-II -cum- Special Judge, Excise, Begusarai and if confiscation proceeding has been initiated, to the satisfaction of the District



Magistrate -cum- Collector, Begusarai, on the following conditions:-

(I) The petitioner will produce the proof of valid certificate of registration/ownership in his favour including the insurance papers;

(II) The petitioner will furnish surety bond of Rs.50,000/- but not in the form of bank guarantee or cash, with two sureties of the like amount to the satisfaction of the learned Additional Sessions Judge-II -cum- Special Judge, Excise, Begusarai or the District Magistrate -cum- Collector, Begusarai, as the case may be;

(III) The petitioner shall give an undertaking on affidavit that he will not deal with the vehicle in question or alienate or encumber the same creating any kind of adverse interest against the interest of the State during the pendency of the confiscation proceeding;

(IV) The petitioner will not use the vehicle for any illegal purpose and as and when required, he will produce the vehicle in question before the court or authority concerned.

(V) At the time of release of the vehicle in question, the concerned court or authority shall get prepared photo copy of the vehicle in question duly certified in presence of the petitioner;



(VI) Panchnama of the vehicle in question shall also be prepared and will be kept on record which may be used as secondary evidence and the petitioner will furnish an affidavit incorporating therein an undertaking not to challenge the said photo copy or panchnama so prepared in his presence at the time of release of the vehicle in question for use in course of the trial or confiscation proceeding as the case may be.

The entire exercise of release will be done by the learned Additional Sessions Judge-II -cum- Special Judge, Excise, Begusarai or the District Magistrate -cum- Collector, Begusarai within three weeks of receipt/production of a copy of this order.

It is made clear that we have not expressed any opinion with regard to the merits of accusation or with regard to the ownership of the vehicle in question.

Accordingly, the writ application is allowed to the extent as indicated above.

(Dinesh Kumar Singh, J.)

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	29-05-2020
Transmission Date	N/A

