

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3252 of 2020

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Dharmdev Paswan @ Dharmdeo Paswan @ Dharamdev Ram, Son of
Raghunath Ram @ Raghunath Paswan Resident of Village- Kthari War Khas,
Police Station- Madanpur, District- Aurangabad.

... .. Petitioner/s

Versus

1. The State of Bihar, Through the Principal Secretary, Excise Department,
Bihar, Patna.
2. The District Magistrate, Gaya.
3. The Superintendent of Police, Gaya.
4. The Officer In Charge Dobhi Police Station, Dist.- Gaya.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Binay Kumar
For the Respondent/s : Mr.Vivek Prasad (Gp7)

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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 : 27-02-2020

Heard Mr. Binay Kumar, learned counsel for the
petitioner and learned A.C. to G.P.-7, appearing on behalf of the
respondents.

The present writ application has been filed for release of
PIAGGI APE (Tempo) bearing Registration No.BR-26PA-1746,
in favour of petitioner, which has been seized in connection with
Excise Case No.684 of 2019, registered for the offences
punishable under Section 30(a) of Bihar Prohibition and Excise
Act, 2016, as amended by the Amendment Act 8 of 2018
(hereinafter referred to as 'the Act').



The relief, prayed for by learned counsel for the petitioner, as stipulated in paragraph No.1 of the writ application reads as follows :-

“1. That this application is for issuance of appropriate writ(s), order(s) and direction(s) to the concern authority to release PIAGGI APE (Tempo) bearing registration No.BR26PA-1746 which has been seized in connection with Excise Case No.684 of 2019 dated 20.10.2019 of District Gaya, P.S.-Dobhi, registered under Section 30(a) of the Bihar Prohibition and Excise (Amendment) Act, 2018.”

The prosecution case is that on 20.10.2019, on secret information, a three wheeler Tempo was intercepted by Excise personnel, SAP Force and Home Guard and from the vehicle in question, 76 litres of country made illicit liquor were recovered consequently, the vehicle was seized, leading to registration of Excise Case No.684 of 2019.

Learned counsel for the petitioner submits that the petitioner is registered owner of the vehicle in question and certificate to this effect has been brought on record as Annexure-2 to the writ application and the vehicle is rotting in open sky.

Counter affidavit dated 15.02.2020 has been filed on behalf of respondent No.2, District Magistrate, Gaya to the effect that Confiscation Proceeding being Confiscation Case No.384 of 2019 has been initiated and notices have been issued to the



petitioner whereupon show cause has been filed on behalf of the petitioner in the confiscation proceeding.

In such circumstances, learned counsel for the respondent-State has no objection if the writ application is disposed of directing the concerned respondents to conclude the confiscation proceeding within a time frame, if the same has not been concluded.

Considering the fact that once the confiscation proceeding is initiated, the exercise of discretionary jurisdiction under Article 226 of the Constitution of India, having self imposed restriction can be exercised in exceptional or a monstrous situation, such as when fundamental rights have been violated, the impugned order or the proceedings are wholly without jurisdiction or where the principle of natural justice has been grossly violated or vires of the Act is under challenge. Considering the view taken by the Apex Court in the case of **State of Karnataka Vs. K. Krishnan (2000) 7 Supreme Court Cases 80** and in the case of **State of West Bengal and Ors. Vs. Sujit Kumar Rana, (2004) 4 Supreme Court Cases 129**, a Full Bench of this Court in the case of **Baleswar Roy Vs. The State of Bihar and Ors , 2018(4) PLJR 970**, we are not inclined to pass order for release of the vehicle for the present.



The Collector-cum-District Magistrate, Gaya is expected to conclude the confiscation proceeding being Confiscation Case No.384 of 2019, within a period of six weeks of receipt or production of the order in accordance with law.

The petitioner is also expected to appear regularly and participate in the confiscation proceeding.

Accordingly, with the above observation and direction, the present writ application is disposed of.

The office is directed to communicate this order to the District Magistrate, Gaya for its strict compliance.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

sanjeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.03.2020.
Transmission Date	NA

