

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2034 of 2020

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Dhiraj Kumar, Son of Surendra Ray, Resident of Village- Shak Thakursi @
Kusiari, P.S.- Bidupur, District- Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department,
Government of Bihar, Patna.
2. The Director General of Police Bihar, Patna.
3. The Excise Commissioner Bihar, Patna.
4. The Inspector General of Police Bihar, Patna.
5. The District Magistrate/ Collector Vaishali at Hajipur.
6. The Superintendent of Police Vaishali at Hajipur.
7. The Officer-in-Charge of Rajapakar Police Station District- Vaishali.
8. The Investigation Officer of Rajapakar P.S. Case No. 204/19, Rajapakar
Police Station, District- Vaishali at Hajipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anuj Kumar, Adv.
For the Respondent/s : Mr. Vikash Kumar (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 : 29-01-2020

Heard Mr. Anuj Kumar, learned counsel for the
petitioner and Mr. Rewati Kant Raman, learned AC to SC-11 for
the respondent -State.

The present writ application has been filed for
release of Pulsar Motorcycle of the petitioner, bearing
Registration No. BR31AF0650, seized in connection with
Rajapakar P.S. Case No. 204 of 2019, registered under Sections



30(a) and 32(2) of the Bihar Prohibition and Excise (Amendment) Act, 2016, as amended by Amendment Act 8 of 2018 (hereinafter referred to as 'the Act'). The relief(s), as prayed for in paragraph no.1 of the petition, read(s) as follows:-

“1(i) To release the Pulsar Motorcycle bearing registration no. BR31AF0650 in favour of the petitioner which was seized in connection with Rajapakar P.S. Case No. 204/19 dated 30.08.2019, registered for the offence under sections 30(a), 32(2) Bihar Prohibition and Excise Amendment Act 2018, awaiting confiscation.”

The prosecution case which got initiated on the basis of a written report of Uday Kumar Singh, being the S.I., of police submitted to the S.H.O., Rajapakar Police Station, is to the effect that on 29/30.08.2019 at 2.30 A.M., the informant received a secret information that huge quantity of illicit liquor has been stored in the hut of one Puran Rai. Consequently, raid was laid and from a Swift Dezire vehicle, bearing Registration No. BR 31R 9572 parked in the alleged hut, four accused persons, including the petitioner were apprehended. From the alleged car, 45 litres of Indian Made Foreign Liquor and from the hut in question, 6238 litres of Indian Made Foreign Liquor were recovered. The motorcycle of the petitioner which was parked near the alleged hutment, was also seized.



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 has been brought on record, as Annexure-2. This is an admitted position that no recovery of liquor or intoxicant has been made from the vehicle in question. The seized vehicle is rotting under the open sky. It is further submitted that since there is neither recovery of liquor from the motorcycle nor the motorcycle was being used for carrying liquor or intoxicant, hence it is not liable for confiscation under the provisions of Section 56 of the Act. A statement has been made in paragraph no.10 of the petition that the petitioner has not received any notice with regard to initiation confiscation proceeding.

Learned AC to SC-11 does not dispute the fact that neither any intoxicant nor liquor has been seized from the vehicle in question nor the vehicle was being used for carrying any liquor or intoxicant.

Admittedly, the petitioner was not found in the vehicle in question at the time of seizure. Hence, no offence under Section 37(b) or 37(c) of the Act is made out against the petitioner.

Considering the rival submission of the parties, this



is admitted position that recovery has not been made from the motorcycle in question, nor it is alleged that the motorcycle in question was used for carrying the intoxicant or liquor, whereas Section 56(b) of the Act clearly mandates that the vehicle would be liable for confiscation only when intoxicant or liquor is being found to be carried through it. There is no accusation that liquor was being carried through the vehicle in question. Hence, if the seized vehicle was not liable for confiscation under Section 56(b) of the Act, then there is no requirement of transmitting a report by the seizing officer or detaining officer under Section 58 (1) of the Act to the Collector.

Considering the fact that since it is admitted position that the confiscation proceeding has not been initiated moreover, more than two lakh cases have been registered in the State of Bihar, under the Act in question hence there is no likelihood of the trial being concluded in near future. However, learned counsel for the respondents has no objection with regard to the provisional release of the vehicle in question, we direct that the same be released provisionally till the conclusion of the trial or the confiscation proceeding, if any, to the satisfaction of learned A.D.J.-cum-Special Judge, Excise/authorized officer, Vaishali at Hajipur on the following conditions:



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

(II) The petitioner will furnish bank guarantee of rupees fifty thousand, with two sureties of the like amount to the satisfaction of the Special Court concerned or the confiscation authority, 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.

It is expected from the learned Court below to conclude the release exercise within ten days 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 this case 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)

Amrendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	05.02.2020
Transmission Date	

