

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2391 of 2020

=====

Sanjay Kumar Chourasiya, S/o Shiv Shankar Prasad Chourasiya, R/o Village-
Lakhnu Saray, P.S. Sasaram, District- Rohtas.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department Govt.
of Bihar, Patna.
2. The District Magistrate-Cum-Collector, Kaimur at Bhabua.
3. The Superintendent of Police, Kaimur at Bhabua.
4. The Excise Inspector Mohania Area Kaimur at Bhabhua.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Dharmendra Kumar Singh, Adv.

For the Respondent/s : Mr. Vikash Kumar, SC-11

Mr. Rewati Raman, AC to SC-11

=====

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

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

Date : 25-02-2020

Learned counsel for the petitioner is permitted to
make necessary correction in paragraph no.1 of the writ
application with regard to registration number of the vehicle.

Heard learned counsels for the parties.

The present writ application has been filed for



release of Hero CB Shine motorcycle bearing registration No. BR24U4128 seized in connection with Prosecution Report No.23 of 2019-20, registered under Section 30(a) of the Bihar Prohibition and Excise Act, 2016, as amended by Amendment Act 8 of 2018 (hereinafter referred to as 'the Act').

The prayer of the petitioner, as stipulated in paragraph No.1 of the writ application, reads as under :-

“To issue an appropriate writ writs, order orders, direction directions including a writ in the nature of Mandamus Commanding the respondents to release the vehicle (Motorcycle Honda Shine) of the petitioner bearing Registration No. BR-24U-4128, Chassis No. ME4JCT34DHT036791, Engine No.JCT73ET1063619, which is belonging to the petitioner and seized in Prosecution Report No. 23 of 2019-20 u/s 30(a) Bihar Excise Act.

(ii) To issue an appropriate writ/order or direction directing the Respondents not to take any coercive measure against the vehicle of the petitioner.

(iii) To grant any other writ/order or direction may be issued in which the petitioner is entitled to.”

The prosecution case is that on the basis of secret informant, a raid was laid when from a motorcycle, 4.940 litres



of Indian Made Foreign Liquor were recovered, leading to registration of the present prosecution case.

It is submitted by learned counsel for the petitioner that only on the basis of suspicion, the accusation has been levelled against the petitioner. The petitioner is the registered owner of the vehicle in question and a copy of the certificate of registration of the same has been brought on record, as Annexure-2. The motorcycle in question is rotting under the open sky. It is further submitted the petitioner is ready to undertake that he will neither transfer the ownership of the vehicle in question, nor he will change the shape of the same and he will produce the same before the Court or the authority concerned as and when required, if the vehicle in question is released in his favour. It is further submitted that till date, confiscation proceeding has been initiated with regard to the vehicle in question.

It appears that the writ application was registered on 31.01.2020 and thereafter, vide order dated 06.02.2020, on the request of Mr. Rewati Raman, learned AC to SC-11, the matter was adjourned for 24.02.2020 enabling him to seek instruction and to file counter affidavit. Thereafter, on the same request, the matter was adjourned on several occasions, but till



date counter affidavit has not been filed. Even today, when the matter was called out, Mr. Rewati Raman has submitted that despite several reminders, he is not having any instruction whether the confiscation proceeding has been initiated or not. However, he further submits that since the said recovery has been made from the motorcycle, hence, it is liable for confiscation.

In the circumstances, we dispose of the writ application on its merit.

Considering the fact that the seizure was made on 13.10.2019 and there is nothing on record to suggest that any report under Section 58(1) of the Act has been transmitted to the Collector, Kaimur by the seizing or the detaining authority or any confiscation proceeding has been initiated. Hence, no useful purpose will be served in allowing the vehicle to rot under open sky, leading to a complete waste of public money. Keeping the vehicle in such condition and allowing it to rot will ultimately reduced it to a junk has been deprecated by the Supreme Court in the case of *Sunderbhai Ambalal Desai Vs. State of Gujrat* and other analogous cases (2002) 10 SCC 283 and in the case of *General Insurance Council and Ors. Vs. State of Andhara Pradesh and Ors.* reported in (2010) 6 Supreme Court Cases



768.

Accordingly, we direct that the vehicle in question bearing Registration No. BR24U4128 seized in connection with Prosecution Report No.23 of 2019-20, be released provisionally till the conclusion of the trial/confiscation proceeding, if any, to the satisfaction of the learned A.D.J.-cum-Special Judge (Excise), Kaimur/Collector-cum-District Magistrate, Kaimur, on the following conditions :-

(I) The petitioner will produce the proof of valid certificate of registration/ownership in his favour, including the insurance papers before the Court concerned.

(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 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 made clear that the present order of provisional release of the vehicle in question will not be given effect to, if the final order has been passed in the confiscation proceeding.

The entire exercise will be done by the Special Judge/concerned authority 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)

Ashwini/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

