

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3049 of 2020

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Manish Kumar S/o Wakil Ray Resident of Village- Mobarakpur, P.S.-
Danapur, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
2. The Collector, Patna.
3. The Superintendent of Police, Patna.
4. The S.H.O. Danapur Police Station, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Dhananjay Kumar Tiwary
For the Respondent/s : Mr.Vikash Kumar (Sc11)

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 09-07-2020

Heard learned counsel for the petitioner and learned
counsel for the respondents.

Petitioner has prayed for following reliefs:-

- “(i) For directing the respondent authority to release one PULSER motorcycle in question having Registration No.BR0ICU 6802, Chassis No.MD2A11CZ5GRL20030 which has been seized in connection with Danapur P.S. Case No.160/19 dated 26.02.2019 under Sections 30(a)(c)(d) & 37(c) of the Bihar Prohibition and Excise (Amendment) Act, 2018.
- (ii) Also for any other relief(s) for which petitioner is found entitled in the facts and circumstances of the case.



Informant is a police officer who in his written complaint has alleged that on receiving confidential information that illicit liquor is being prepared and also being consumed, at a particular place, he along with other police personnel raided the place and arrested two persons in a drunken condition and from a hut, illicit liquor as well as articles for preparation of illicit liquor was recovered along with cash and three motorcycles were also recovered and thereafter illicit liquor, cash and motorcycles were seized for which FIR was registered under Section 30(a)(c)(d) and 37(c) of Bihar Prohibition and Excise (Amendment) Act, 2018 giving rise to Danapur P.S. Case No.160/19 dated 26.02.2019.

It is submitted on behalf of petitioner that no illicit liquor has been recovered from the seized motorcycles which is apparent from the FIR as well as seizure memo as such seized vehicle is not liable for confiscation under Section 56 of the Excise Act and bar of jurisdiction in confiscation as contemplated under Section 60 of the Act is not applicable and the Special Court, Excise where the excise case is pending has jurisdiction to pass order of provisional release of the vehicle.

In view of law laid down by Division Bench of this Court in case of Diwakar Kumar Singh vs. State of Bihar since



reported in 2018 (3) PLJR 403 and following said judgment as well as other judgments passed by this Court, the Excise Commissioner, Bihar Patna in appeal arising out of Confiscation Case No. 107 of 2019 Ajit Roy Vs. Collector, Sheohar has held that transportation of prohibited article under the Act is a sine qua non for a vehicle to be confiscated. The relevant paragraph of order passed in Appeal by Excise Commissioner is quoted below:-

“From the aforesaid judgment and order passed by the Hon’ble High Court of Patna it is well established that the transportation of prohibited article under the Act, 2016, is a sine qua non for a vehicle to be confiscated on the passing of an order by the District Collector. Therefore the confiscation order passed by the learned Collector, Sheohar in confiscation Case No. 107/2019 on 09.12.2019 is hereby ordered to be modified to the extent that the three motorcycles bearing registration No. BR-06BJ 6591; BR-06BL 5384 and BR-55 4036 will be released after verifying the document related to registration and owner of the said vehicle.”

It is submitted that no confiscation proceeding has been initiated by the District Collector against the said vehicle, however, if any, confiscation proceeding has been initiated, same is directed to be dropped.

Accordingly, petitioner is directed to file an application before the concerned Special Court (Excise) under Section 451 of Cr.P.C. for interim release of the vehicle which



has been seized by the police in the case as same are not liable for confiscation and as such it is the Special Court (Excise) which can pass an order for interim release of the vehicle, with terms and conditions of release as usually imposed. If any such application is filed by the petitioner same to be disposed of within 30 days from the filing of said application.

With the aforesaid observation and direction, this writ petition is disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.07.2020
Transmission Date	NA

