

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2748 of 2020

=====

Bhola Ray, S/o Sudhan Ray, Resident of Village- Ranjitpur Dumara, Ward No. 4, Police Station- Dumra, District- Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Excise Prohibition and Registration Department, Government of Bihar, Patna.
2. The Collector Cum District Magistrate, Sitamarhi, Dist- Sitamarhi.
3. The Superintendent of Police Sitamarhi, District- Sitamarhi.
4. The Superintendent of Excise department Sitamarhi, Dist.- Sitamarhi.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Uday Kumar, Adv.
For the Respondent/s : Mr. Kumar Manish (SC-5)

=====

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
and

HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

Date : 20-02-2020

Heard Mr. Uday Kumar, learned counsel for the petitioner and Mr. Kumar Pankaj, learned AC to SC-5 for the respondent State.

The present application has been filed for release of the T.V.S. Apache Motorcycle of the petitioner bearing Registration No. BR30X3492, which has been seized in connection with Case No. C2/668/2019, 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 relief as stipulated in paragraph no.1 of the



writ application reads as follows:-

“This is an application for issuance of an appropriate writ/orders/direction to release TVS APACHE Motorcycle of the petitioner bearing Registration No. BR30X3492 Chasis No. MD634CE45K2E26803 in his favour which was seized on 23/10/2019 by the police officer of Excise department Sitamarhi by registered a case as C2/668/2019 under section 30(a) of the Bihar Prohibition and Excise Act, 2016 and further order for giving possession of the alleged Motorcycle to the petitioner.”

The prosecution case got initiated on the report submitted by Assistant Commandant, S.S.B., posted at Nepal Boarder is to the effect that 12 litres of Nepali liquor were recovered from the motorcycle in question, leading to registration of Case No. C2/668/2019.

It is submitted by learned counsel for the petitioner that the petitioner is the registered owner of the vehicle in question and certificate of the registration of the vehicle in question has been brought on record as Annexure-2. It is further submitted that neither the petitioner has been made accused nor the vehicle in question was being driven by the petitioner. Moreover, neither the proposal was sent for initiation of the proceeding nor any notice has been served upon the petitioner, being the owner of the vehicle in question with



regard to initiation of the confiscation of the proceeding. It is further submitted that the petitioner is ready to undertake that petitioner will neither transfer the ownership of the vehicle in question nor will he change the shape of the same and will produce the same before the Court concerned as and when required.

Learned AC to SC-5, relying upon the counter affidavit filed on behalf of respondent nos. 2 and 4, the Collector-cum-District Magistrate, Sitamarhi and the Superintendent of Excise Department, Sitamarhi, respectively, submits that though Confiscation Case No. 857 of 2019 has been initiated, but admits that the notice has not been served upon the petitioner, being the owner of the vehicle in question, rather the notice has been issued to the son of the petitioner, who was driving the vehicle in question at the time of seizure.

Considering the rival submissions of the parties, the respondents are not disputing the petitioner being the owner of the vehicle in question. The proposal/report under Section 58(1) of the Act has been transmitted by the Superintendent, Excise, Sitamarhi, whereas Section 58(1) of the Act mandates that the report should be transmitted by the Detaining or Seizing authority. In the present case, the seizing authority is Assistant



Commandant, S.S.B. The proposal report does not depict as to who is the owner of the vehicle in question and confiscation with regard to the vehicle in question has been recommended by only naming the person who was driving the vehicle in question at the time of seizure, which suggests the mechanical manner in which the report dated 18.11.2019 has been transmitted, as contained in Annexure-A to the counter affidavit. Similarly, notice issued in Confiscation Case No. 857 of 2019 reflects that it has been issued by the Deputy Collector, In-Charge, District Legal Section, Sitamarhi and there is nothing on record to suggest that the Deputy Collector, In-Charge has been authorized for conducting confiscation proceeding as stipulated under Section 2(15) of the Act. Since confiscation proceeding has serious civil consequences to the person who is the owner of the property to be confiscated and he has neither been made accused in the case nor any recommendation has been made nor confiscation proceeding has been initiated against owner of the vehicle in question, hence it cannot be said that any confiscation proceeding has ever been initiated with regard to the vehicle in question. The petitioner claims to be owner of the vehicle in question and he has neither been made accused nor notice in the confiscation proceeding has been issued to him.



In the circumstances, we feel that procedural aspect of the confiscation proceeding as envisaged in the Act has not strictly been followed at all, moreover, it also appears from the perusal of the record that the investigating agency is also not bothered to ascertain the ownership of the vehicle in question. The case was registered on 22.10.2019 and the counter affidavit has been sworn on 17.02.2020, which reflects the casual manner in which the quasi judicial proceeding are conducted by the concerned authority.

In the circumstances, we direct that the vehicle in question, bearing Registration No. BR30X3492 Chasis No. MD634CE45K2E26803 be released provisionally till the conclusion of the Confiscation Case No.857 of 2019 on the following conditions to the satisfaction of Collector-cum-District Magistrate, Sitamarhi:

(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 Collector-cum-District Magistrate, Sitamarhi 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.

The entire exercise of release will be concluded by the concerned respondent 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 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)

Amrendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	19.03.2020
Transmission Date	

