

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2182 of 2020

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SURESH PASWAN, Son of Kapileswar Paswan Resident of Village- Rampur
Kanth Madhurapur, P.S. Suppi, District- Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Excise Department,
Government of Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The District Magistrate, Sitamarhi.
4. The Superintendent of Police, Sitamarhi.
5. The Sub Inspector Excise, Sitamarhi.
6. The A.S.I. cum SHO of Suppi Police Station, District -Sitamarhi.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Birendra Kumar
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)

(The proceedings of the Court are being conducted through Video Conferencing and the Advocates joined the proceedings through Video Conferencing from their residence.)

Date : 09-07-2020

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

Petitioner has prayed for following relief:-

- (i) For issuance of appropriate / writ / writs/
direction/ direction/ order / orders for release of the TVS
Apachi bearing Registration No.BR30X 7784, Engine
No.CE4KK2010574, Chassis No.MD634CE49K2K10658 in
connection with Suppi P.S. Case No.254/2019, registered under
Sections 414/272/273 of Indian Penal Code and under Section



30(a) of Bihar Prohibition and Excise Act, 2016, pending in the Court of learned A.D.J.-2nd –cum-Special Judge (Excise Act) Sitamarhi, Which has been sent to the learned Collector cum District Magistrate, Sitamarhi for its confiscation.”

(ii) For issuance of appropriate / writ / writs/ direction/ direction / order/ orders for release of vehicle in question in favour of the petitioner on adequate surety on the terms and conditions as laid down by this Hon’ble Court.

(iii) For any other relief/relies to which the petitioner may be found entitled in the facts and circumstances of the case.”

Informant who is a police officer has stated in his complaint that he received a confidential information that FIR named accused are indulged in trade of illicit Nepali Saufi and as he reached said place, four miscreants assembled there managed to flee away and from the bank of river, 811.5 litre Nepali saufi liquor was recovered and one Apachae motorcycle was recovered and seized for which FIR was instituted under Sections 414, 272, 273 of IPC and Section 30(a) of Bihar Prohibition and Excise Act, 2016 giving rise to Suppi P.S. Case No.254/2019 dated 6.12.2019.

It is submitted on behalf of petitioner that no illicit liquor has been recovered from the seized vehicle 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, Shivwhar 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 on recommendation of police,



confiscation proceeding being Confiscation Case No.137 of 2020 has been initiated by the District Collector against the said vehicle, in which petitioner has been directed to appear and file his show cause.

The writ petition is disposed of with a direction to the Collector, Sitamarhi to dispose of the proceeding at the earliest taking into consideration the observations as made above.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.07.2020
Transmission Date	NA

