

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2203 of 2020

=====

Fekan Paswan @ Fekan Kumar Son of Shivchandra Paswan Resident of
Village- Masahi, 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. of Excise Police Sitamarhi, District- Sitamarhi.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.Birendra Kumar
For the Respondent/s : Mr.Kumar Pankaj, AC to 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 : 18-02-2020

Heard Mr. Birendra Kumar, learned Counsel for the
petitioner and Mr. Kumar Pankaj, learned Assistant Counsel to
Standing Counsel No. 5 for the respondents.

The present writ application has been filed for release of
Hero Glamor motorcycle, bearing Registration No. BR30W-3956,
which has been seized in connection with Excise Case No. C-2
653 of 2019, registered for the offence punishable 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 prayed for, stipulated in paragraph 1 of the writ application, reads as follow:-

“(i) For issuance of appropriate writ/writs, direction/directions, order/orders for release of Hero Glamor bearing Registration No. BR 30W-3956, ENGINE No. JA06ERKGC14421, Chechis No. MBLJAW105KGC25188; in connection with C-2 653 of 2019, registered under section 30 (a) 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/directions, order/orders for release of vehicle in question in favour of the petitioner on adequate surety on the terms and conditions as laid own by this Hon'ble Court.”

The prosecution case got initiated with submission of a report by Inspector of Excise, Sitamarhi, dated 16.10.2019, is to the effect that the motorcycle was intercepted by the Officials of SSB, Sitamarhi, and 8.7 litres of Nepali Saufi liquor was recovered from the said motorcycle, leading to the registration of Excise Case No. C-2 653 of 2019.



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 of the seized vehicle has been brought on record by way of Annexure-2 to the writ petition. The vehicle is rotting under the open sky. It is further submitted that confiscation proceedings has not been initiated. The petitioner is ready to produce the motorcycle in question as and when required by the Court concerned and undertake not to change the shape and nature of the motorcycle in question and also not to transfer or alienate the motorcycle in question.

Mr. Kumar Pankaj, learned Assistant Counsel to Standing Counsel No. 5, submits that the confiscation proceeding, being Confiscation Case No. 953 of 2019 has been initiated, however, the report for confiscating the vehicle in question under Section 58 (1) of the Act, as contained in Annexure-A to the counter affidavit, has been transmitted by the Superintendent of Excise, Sitamarhi, and not by the seizing or detaining authority. However, it is apparent from the notice as contained in Annexure-B to the counter affidavit that in the confiscation proceeding, notice has only been issued to one Ram Kumar Paswan.

Having heard learned Counsel for the parties and on perusal of the counter affidavit, it appears that the mandate of



Section 58 (1) of the Act has not been complied with and the report/proposal for initiation of confiscation proceeding has not been transmitted to the District collector by the seizing or detaining authority and the name of the actual owner of the seized motorcycle has not been mentioned in the report under Section 58 (1) of the Act. In spite of the fact that the petitioner was apprehended from the place of recovery; but the notice in confiscation proceeding has been issued to Ram Kumar Paswan only. This shows how mechanically the quasi judicial functions are being performed by the authorities in the State of Bihar. From the counter affidavit, it further appears that the respondents have not disputed that the petitioner is the owner of the motorcycle in question.

Keeping in view the fact that the present case was registered on 15.10.2019 and about four months have passed by and admittedly though confiscation proceeding has been initiated, but no notice has been issued to the petitioner being the owner of the seized vehicle, moreover Section 58 (1) of the Act mandates the transmission of the report under Section 58(1) by the detaining or seizing authority to the Collector for the things which are liable for confiscation without any reasonable delay, but in the present case, the report has been transmitted by Superintendent of Police.



It is admitted position that the petitioner was present at the place of seizure but confiscation proceeding has admittedly not been initiated against him and moreover, more than two lakh cases have been registered in the State of Bihar, there is no likelihood of the trial being concluded in near future, and allowing the vehicle to turn into junk would ultimately result into waste of public money, as has been deprecated by the Supreme Court, in the cases of **Sunderbhai Ambalal Desai Vs. State of Gujrat and other**, reported in **(2002) 10 SCC 283** and **General Insurance Council and Ors. Vs. State of Andhara Pradesh and Ors.**, reported in **(2010) 6 SCC 768**, we are constrained to direct provisional release of the vehicle in question till the conclusion of the confiscation proceeding to the satisfaction of District Magistrate -cum- Collector, Sitamarhi, on the following conditions:-

(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 District Magistrate -cum- Collector, Sitamarhi;



(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 will be done by the District Magistrate -cum- Collector, Sitamarhi 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)

Prabhakar Anand/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	24-03-2020
Transmission Date	N/A

