

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.3163 of 2020**

Sumit Kumar Chaudhary, Son of Sahdev Chaudhary, Resident of Village-Bijhrauli, Police Station-Tisiauta, District-Vaishali.

... .. Petitioner/s

Versus

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

... .. Respondent/s

**Appearance :**

|                      |   |                              |
|----------------------|---|------------------------------|
| For the Petitioner/s | : | Mr. Priyesh Kumar, Adv.      |
| For the Respondent/s | : | Mr. Vivek Prasad, GP-7       |
|                      |   | Mr. Sanjay Kumar, AC to GP-7 |

**CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH**

**and**

**HONOURABLE MR. JUSTICE ANIL KUMAR SINHA**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)**

**Date : 26-02-2020**

Heard learned counsels for the parties.

The present writ application has been filed for release of Mahindra Bolero DI Turbo vehicle bearing registration No. BR31PA-1269 seized in connection with Excise Case No. C2-705 of 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 prayer as stipulated in paragraph No.1 of the writ application reads as under :-

“1. That the instant application is being filed on behalf of the above named petitioner for issuance of writ(s), Order(s) or direction(s) for the following reliefs :-

- (i) For commanding the respondent



authorities to release the Mahindra Bolero DL Turbo bearing Registration No. BR31PA1269, Engine No. GHF4K69141, has been seized in connection with Excise Case No.C2 705 of 2019 registered for the offence punishable under Section 30(a) of the Bihar Prohibition and Excise Act, 2016.

(ii) Also for any other relief(s) for which petitioner is found entitled in the facts and circumstances of the case.”

The prosecution case as per the written report of Sub-Inspector of Police, Excise and Prohibition Department (Flying Squad), Sitamarhi submitted to the ADJ-II-cum-Special Judge (Excise), Sitamarhi is to the effect that the vehicle in question was seized by the Sub-Inspect of S.S.B. at Nepal border and from the said vehicle, 855 litres of Nepali liquor has been recovered, leading to registration of Excise Case No. C2 705/2019.

It is submitted by learned counsel for the petitioner that the petitioner is the registered owner of the vehicle in question and a copy of the certificate of registration has been brought on record as Annexure-2. The motorcycle in question is rotting under the open sky. It is further submitted that the petitioner undertakes that if the vehicle in question is released in his favour, he will neither transfer, the ownership of the vehicle in question, nor change the shape of the same and he will produce the same before the Court concerned as and when required.



A counter affidavit, dated 17.02.2020, has been filed on behalf of respondent No.2 which reflects that Confiscation Case No.961 of 2019 has been initiated against unknown. Thereafter, vide Letter No. 1550, dated 07.12.2019, a proposal for initiating confiscating proceeding was transmitted by the Excise Superintendent, Sitamarhi to the Collector-cum-the District Magistrate, Sitamarhi, but without mentioning the name of the owner of the vehicle in question. Subsequently, a notice was issued by the Deputy Collector I/c, District Legal Cell, Sitamarhi, vide letter dated 04.01.2020, as contained in Annexure-B to the counter affidavit, suggesting initiation of confiscation proceeding, but the same has also been issued against unknown, which clearly suggests that only empty formality has been done by the authority concerned.

It is submitted by learned AC to GP-7 relying on the counter affidavit that confiscation proceeding has been initiated, but it appears that neither the authority who recommended for initiation of confiscation proceeding or the authority who issued notices has ascertained the owner of the vehicle in question. Hence, it cannot be said that the notices has actually been issued to the petitioner.

Considering the rival submissions of the parties and



on perusal of the counter affidavit it appears that vide Annexure-A to the counter affidavit, the Excise Superintendent, Sitamarhi has recommended for initiation of confiscation proceeding of the vehicle in question without mentioning the owner of the vehicle, which is contrary to the provisions of Section 58(1) of the Act, which mandates that if anything is liable to be confiscated under Section 56 of the Act, the seizing/detaining authority is expected to submit a report to the Collector without reasonable delay whereas in the present case, the seizure has been made on 17.11.2019 by the S.S.B. and from the notices issued in Confiscation Case No. 961 of 2019, dated 04.01.2020 by the Deputy Collector I/c reflects that it has been issued against unknown which suggests the callous manner in which the *quasi judicial* proceedings are conducted.

In the circumstances, discussed above, no confiscation proceeding has actually been initiated or any notice has been issued to the petitioner, in accordance with the provisions of the Act. Moreover, 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 to a junk which 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. BR31PA-1269, seized in connection with Excise Case No. C2-705 of 2019, 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), Sitamarhi/Collector-cum-District Magistrate, 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 before the Court concerned.

(II) The petitioner will furnish surety bond of Rs.2,50,000/- 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.



However, it is expected from the authority concerned to conclude the confiscation proceeding, if initiated, within a period of 12 weeks from today, in accordance with law. The petitioner is also expected to appear in the confiscation proceeding regularly.

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/-

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