

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3215 of 2020

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Dhirendra Das @ Dhirendar Das Son of late Raghunandan Das, Resident of
Village- Dostiya, Ward No. 10, P.S. Sonbarsa, District- Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department,
Govt. of Bihar, Patna.
2. The District Magistrate, Sitamarhi.
3. The Superintendent of Police, Sitamarhi.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Alok Kumar Jha
For the Respondent/s	:	Mr.Vivek Prasad (Gp7)

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
and
HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

Date : 27-02-2020

Heard Mr. Alok Kumar Jha, learned counsel for the
petitioner and learned A.C. to G.P.-7 appearing on behalf of the
respondents.

The present writ application has been filed for release of
H.F. Delux Motorcycle bearing Registration No.BR-30T-6492, in
favour of petitioner, which has been seized in connection with case
bearing No.C2 636 of 2019, registered for the offences punishable
under Section 30(a) of Bihar Prohibition and Excise Act, 2016, as
amended by the Amendment Act 8 of 2018 (hereinafter referred to
as ‘the Act’).



The relief, prayed for by learned counsel for the petitioner, as stipulated in paragraph No.1 of the writ application reads as follows :-

“1. That this writ application is being filed for issuance of appropriate writ/order or direction to the respondent authority to release the vehicle Hero H.F. Delux Motorcycle bearing Registration No.BR30T-6492 in favour of the petitioner which was seized in connection with C2 636 of 2019 registered for the offence u/s 30(A) Bihar Prohibition and Excise Act, 2016.”

The prosecution case got initiated on the basis of secret information to the effect that illicit Nepali Saufi Wine is being transported from the bordering ares of Nepal, whereupon the vehicle in question has been intercepted and and from the vehicle in question 18 litres of Nepali Saufi Wine were recovered and the vehicle was seized, leading to registration of case bearing No.C2 636 of 2019.

Learned counsel for the petitioner submits that the petitioner is the registered owner of the vehicle in question and certificate to this effect has been brought on record as Annexure-2 to the writ application and the vehicle is rotting in the open sky.

Counter affidavit dated 17.02.2020 has been filed on behalf of respondent No.2, District Magistrate, Sitamarhi bringing on record the fact that Confiscation proceeding has been initiated by Collector-cum-District Magistrate, Sitamarhi on the



recommendation of Superintendent of Prohibition & Excise, Sitamarhi, vide his letter dated 12.10.2019. Consequently confiscation proceeding being Confiscation Case No.946 of 2019 has been initiated and notices have been issued to the petitioner.

In such circumstances, learned counsel for the respondent-State has no objection if the writ application is disposed of directing the concerned respondents to conclude the confiscation proceeding within a time frame, if the same has not been concluded.

Considering the fact that once the confiscation proceeding is initiated, the exercise of discretionary jurisdiction under Article 226 of the Constitution of India, having self imposed restriction can be exercised in exceptional or a monstrous situation. Such as when fundamental rights have been violated, the impugned order or the proceedings are wholly without jurisdiction or where the principle of natural justice has been grossly violated or vires of the Act is under challenge. Considering the view taken by the Apex Court in the case of **State of Karnataka Vs. K. Krishnan (2000) 7 Supreme Court Cases 80** and in the case of **State of West Bengal and Ors. Vs. Sujit Kumar Rana, (2004) 4 Supreme Court Cases 129**, a Full Bench of this Court in the case of **Baleshwar Roy Vs. The State of**



Bihar and Ors , 2018(4) PLJR 970, we are not inclined to pass order for release of the vehicle for the present.

The Collector, Sitamarhi is expected to conclude the confiscation proceeding being Confiscation Case No.946 of 2019, within a period of six weeks of receipt or production of the order in accordance with law.

The petitioner is also expected to appear regularly and participate in the confiscation proceeding.

Accordingly, with the above observation and direction, the present writ application is disposed of.

The office is directed to communicate this order to the District Magistrate, Sitamarhi for its strict compliance.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

sanjeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.03.2020
Transmission Date	NA

