

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3178 of 2020

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Nand Lal Sah, Son of Late Gopi Sah, Resident of Hira Pakar, Bharwa Tola,
P.S.- Manuwapurl, District- West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Department of Excise, Government of Bihar, Patna.
2. The Principal Secretary, Department of Excise, Government of Bihar, Patna.
3. The District Magistrate West Champaran, Bettiah.
4. The Superintendent of Police West Champaran, Bettiah.
5. The District Transport Officer West Champaran, Bettiah.
6. The Officer-in- Charge Yogapatti (Sanichari), West Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar Gupta, Adv.
For the Respondent/s : Mr. Kumar Manish, SC-5

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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

The present writ application is being heard on merit with the consent of the parties since it is a case of drunken driving and no confiscation proceeding has been initiated.

Heard learned counsels for the parties.

The present writ application has been filed for release of Tractor bearing registration No. BR-22GA-7177 seized in connection with Yogapatti Sanichari P.S. Case No. 37 of 2018, registered under Section 37(c) of the Bihar Prohibition



and Excise Act, 2016, as amended by Amendment Act 8 of 2018 (hereinafter referred to as 'the Act') and Sections 279, 337 and 426 of the Indian Penal Code.

The prayer as stipulated in paragraph No.1 of the writ application reads as under :-

“that this writ petition is being filed for issuance of a direction to the respondent no.3 the District Magistrate, West Champaran to release the vehicle tractor bearing Registration No. BR-22GA-7177, Engine No. 61613, Chasis No. 917711597139 which has been seized in connection with Yogapatti, Sanichari P.S. Case No. 37 of 2018 dated 21.01.2018 under Section 279, 337, 426 of the Indian Penal Code and 37(c) of the Bihar Prohibition and Excise Act, 2016 as there is no confiscation proceeding is pending before the Collector, West Champaran.”

The prosecution case as per the written report of Md. Tabrej submitted before the Yogapatti Sanichari Police Station is to the effect that on 21.01.2018, the informant was going on his TATA 407 vehicle for transporting goods, but on the way, the tractor in question dashed the vehicle of the informant. Thereafter, the driver of the tractor was caught by the local people when he was found in drunken condition and disclosed his name as Sunil Ram. Subsequently, the driver and the tractor was handed over to the officials of the local police station.

It is submitted by learned counsel for the petitioner that from the seizure list it appears that the seizure was made by



the Sub Inspector of Police of Sanichari Police Station, but the FIR reflects that it was virtually seized by a private person which is not permissible under the Act. Even the present case being, the case of drunken driving, the vehicle is not liable for confiscation, as Section 56(b) of the Act mandates if any intoxicant or liquor, unlawfully imported, transported, manufactured, sold or brought along with or in addition to, any intoxicant, liable to confiscation. It is further submitted 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-1. The petitioner is not named in the FIR nor he was present at the place of seizure. 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.

Learned SC-5 submits that it is a case of drunken driving and the confiscation proceeding has not been initiated.

Considering the rival submissions of the parties, since the confiscation proceeding has not been initiated till date, hence, keeping the vehicle in open sky only for the purpose of



producing the same as material exhibit during trial which is not likely to commence keeping in view that more than two lakhs cases have been registered under the provisions of the Excise Act within the State of Bihar.

In the circumstances, no useful purpose will be served in allowing the vehicle to rot under open sky leading to a complete wastage 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 are of the considered opinion that the vehicle in question bearing Registration No. BR-22GA-7177 seized in connection with Yogapatti Sanichari P.S. Case No. 37 of 2018 be directed to be released provisionally till conclusion of the trial/confiscation proceeding, if any, to the satisfaction of the learned A.D.J.-cum-Special Judge (Excise), West Champaran/Collector-cum-District Magistrate, West Champaran, 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.1,50,000/- 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.

The entire exercise for release will be concluded by the Special Judge/concerned 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)

Ashwini/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

