

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2268 of 2020

=====

Kishun Prasad Sah, S/o Rameshwar Prasad Sah, Resident of Village- Sultan
Pokhar, Registry Office, Ward No. -3, P.s.- Forbesganj, District- Araria

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Old Secretariat, Bihar, Patna
2. The Principal Secretary, Excise Department, Government of Bihar, Patna
3. The Collector, Araria
4. The District Transport Officer, Araria
5. The Superintendent of Police, Araria
6. The Excise Superintendent Araria
7. The Station House Office, Fulkaha Police Station, Araria
8. The Motor Vehicle Inspector, Araria

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.Gopal Kumar Jha
For the Respondent/s : Mr.Vikash Kumar (Sc11)

=====

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 13-07-2020

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

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

Petitioner has prayed for following relief:-

“For release of the Hero Super



Splender Motorcycle bearing registration no. BR39L-0419, Engine No. JA05ECC9J11661, Chasis No. MBLJA05EKC9J11455 own by the petitioner to him which has been seized in connection with Fulkaha P.S. Case No. 115 of 2018.”

Informant who is a police officer has alleged in his complaint that he received a confidential information that FIR named accused are coming from Nepal with illicit liquor and accordingly he along with other police personnel reached said place and saw two miscreants coming on two motorcycles but on seeing the police they fled away leaving behind their motorcycle and from jute bag kept on motorcycle Nepali liquor was recovered upon which both motorcycles and illicit liquor were seized and FIR was lodged giving rise to Fulkaka P.S. Case No. 115 of 2018 dated 02.07.2018 instituted under Section 30(a) of Bihar Prohibition and Excise Act, 2016.

Petitioner claims to be the owner of the motorcycle and states that his motorcycle was stolen for which he had instituted an FIR being Farwisganj P.S. Case No. 327 of 2018 dated 04.05.2018 under Section 379 of the Indian Penal Code



and his stolen motorcycle was being misused by the accused for trade of illicit liquor and he is nowhere concerned with said crime and seized motorcycle may be released in his favour during pendency of Confiscating Case No. 328 of 2019 pending before the Collector, Araria.

In facts and circumstances of the present case when the motorcycle of the petitioner was stolen and same was being misused by accused in illicit trade of liquor for which petitioner cannot be faulted as such the confiscating authority is directed to provisionally release the vehicle of petitioner in his favour on due identification and presentation of ownership papers with two sureties (one local) to the extent of the value of the vehicle as indicated in insurance document.

The petitioner while submitting the surety bond shall also furnish the following affidavit/undertakings:-

(i) That the petitioner shall not indulge in creating any third party right or interest in respect of the vehicle during the pendency of the proceeding and shall not alienate the vehicle during this period.

(ii) The petitioner shall furnish an undertaking to produce the vehicle before the confiscating authority as and when



required.

(iii) Prior to release the vehicle a Panchnama would be got prepared by the confiscating authority wherein the photograph of the vehicle shall be taken and will be certified by the petitioner and the same shall be kept on record so that in future if so required it may be used as a secondary evidence. The petitioner shall undertake not to challenge the said Panchanama in course of proceeding/trial.

(Sanjay Karol, CJ)

(S. Kumar, J)

Rajiv/-

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

