

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2747 of 2020

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Mohan Kumar Son of Ram Chandra Singh Resident of Muhalla Naya Nagar,
Ward No.- 2, Police Station- Samastipur/ Hassanpur, District- Samastipur
(Bihar).

... .. Petitioner/s

Versus

1. The State of Bihar through Secretary, Department of Excise, New Secretariat, Patna, Bihar.
2. The Collector, Begusarai.
3. The Officer-in- Charge, Khodawandpur (Chhaurahi) Police Station, P.S.- Khodawandpur (Chhaurahi), District- Begusarai.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Prem Kumar
For the Respondent/s : Mr.Vivek Prasad (GP 7)
Mrs. Manisha Singh, AC to GP 7

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
and
HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

2 06-02-2020 Learned counsel for the petitioner is permitted to

make necessary correction in paragraph 1 of the writ
application.

With consent of the parties, this writ application is
being disposed of, since, it relates to release of motorcycle from
which no recovery of liquor or intoxicant has been made.

Heard learned counsels for the parties.

The present writ application has been filed for
release of Hero Passion Pro motorcycle of the petitioner
bearing Registration No. BR01DG 9764, which has been seized



in connection with Khodabandpur (Chhaurahi OP) P.S. Case No. 125 of 2019, registered for the offence 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 is contained in paragraph no.1 of the writ application, reads as follows:-

“That this application being filed on behalf of the petitioner for direction to release the Hero passion pro motorcycle, bearing Registration No. BR01DG9764 seized on 17.06.2019 in connection with Khodawanpur (Chhaurahi) P.S. Case No. 125/2019, seized by Sri O, Prakash Kumar, Sub-Inspector of Police, Khodawandpur (Chhaurahi) Police Station in favour of the petitioner to the satisfaction of learned Collector/Special Judge, Excise, Begusarai on such term or terms as this Hon'ble Court deems fit and proper.”

The prosecution case, as per the written report of S.I. Om Prakash Kumar of Chhaurahi O.P. submitted to the SHO, Khodabandpur Police Station is to the effect that on 17.6.2019 at 00.45 A.M., a secret information was received that one Pankaj Rai alias Baua had organized a dance program at his house in village Sihma where liquor mafia have also gathered



along with illegal liquor. Consequently, raid was laid and from the house of Pankaj Rai, 44 bottles each of 180 ml Indian Made Foreign Liquor were recovered and two girls were found dancing, which was being watched by several persons and from the spot, altogether 15 persons were arrested.

The petitioner was not arrested from the place of seizure but out of the house of Pankaj Rai, three motorcycles including the motorcycle of the petitioner were found parked.

It is submitted by learned counsel for the petitioner that the petitioner is the registered owner of the vehicle in question and certificate of registration of the vehicle has been brought on record as Annexure-2 to the writ application. Admittedly, the petitioner was not present in the house of accused Pankaj Rai at the time of seizure. Moreover, the offence under Section 30(a) of the Act is made out against the main accused Pankaj. The motorcycle of the petitioner has only been seized on the basis of suspicion as there is no accusation to the effect that the motorcycle in question was being used for carrying the liquor which, if used, would have been liable for its confiscation under Section 56(b) of the Act. It is further submitted that the motorcycle in question is rotting under the open sky and till date, confiscation proceeding has not been



initiated and the petitioner is ready to produce the motorcycle as and when required by the concerned authority.

Mrs. Manisha Singh, learned AC to GP 7 submits that the motorcycle of the petitioner was found parked in front of the house of accused Pankaj Rai from where liquor was recovered, hence it can be presumed that the petitioner was present there and participated in the storage of liquor.

Considering the admitted position that there is no recovery of liquor from the motorcycle in question and the Section 56(b) of the Act clearly mandates that any vehicle or conveyance is liable for confiscation if it is used for carrying liquor or intoxicant. There is nothing on record to suggest that any confiscation proceeding has been initiated.

In the circumstances, in our view, no useful purpose will be served allowing the vehicle to reduce to junk only for the purpose of being produced as material evidence during trial, particularly, in view of the fact that the trial, if any is not likely to be concluded in near future in view of the pendency of two lakh cases having been registered in the State of Bihar under the provisions of the Excise Act.

Keeping the vehicle in such condition and allowing to reduce it into junk, would ultimately result into waste of



public money has been deprecated by the Supreme Court in the case of Sunderbhai Ambalal Desai Vs. State of Gujrat and other analogous cases reported in (2002) 10 SCC 283 and in the case of General Insurance Council and Ors. Vs. State of Andhara Pradesh and Ors. (2010) 6 Supreme Court Cases 768. We, accordingly, direct that the same be released till the conclusion of the trial, if any, on the following conditions to the satisfaction of learned Additional District and Sessions Judge-cum-Special Judge (Excise), Begusarai:

(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 A.D.J.-cum-Special Judge, Excise, Begusarai 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, if any or trial;

(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 of releasing the motorcycle in question will be done by the learned Court below 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)

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