

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.2223 of 2020**

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Ravindra Kumar @ Rabindra Mahto son of Siya Ram Mahto Resident of village- Madhutol, P.s.- Khanpur, District- Samastipur (Owner of the Bolero Pick Up bearing Registration No. BR-33-M-0674, Engine No. GHD1D30097, Chasis No. MA1ZN2GHKD1D38196)

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Registration, Excise and Prohibition, Government of Bihar,
2. The Excise Commissioner, Bihar, Patna
3. The Collector-cum-The District Magistrate, Samastipur
4. The Superintendent of Police, Samastipur
5. The S.H.O. Khanpur, Police Station, Distt.- Samastipur

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr.Pramod Kumar Singh  
For the Respondent/s : Mr.Vivek Prasad (GP-7)

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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 : 20-02-2020**

Heard learned counsels for the parties.

The present writ application has been preferred for release of Bolero Pickup of the petitioner bearing Registration No. BR-33-M-0674, which has been seized in connection with Khanpur P.S. Case No. 187 of 2018, registered for the offences under Sections 30(a), 41(1), (41(2) and 47 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:-

“1. For issuance an appropriate writ/writs/order/orders/direction/directions including a writ preferably in the nature of mandamus for the direction to release the Bolero Pick Up bearing Registration No. BR-33-M-0674, Engine No. GHD1D30097, Chasis No. MA1ZN2GHKD1D38196 in favour of petitioner which was seized in connection with Khanpur P.S. Case No. 187 of 2018 dated 09.12.2018 for offences under Section 30(a), 41(1), (41(2) and 47 of the Bihar Prohibition and Excise Act, 2016, alleged recovery Total Quantity 374 Litters 580 ml. Indian made foreign liquor were recovered from aforesaid vehicle.”

The prosecution case, as per the written report of Ravindra Kumar, being the A.S.I., Khanpur Police Station is to the effect that on 09.12.2018 at 08.15 P.M., on secret information, raid was conducted and from the vehicle in question parked in front of the door of the petitioner, 374.580 litres of Indian Made Foreign Liquor were recovered, leading to registration of Khanpur P.S. Case No. 187 of 2018 and the motorcycle in question was seized.

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 has been brought on record as Annexure-2. It is further submitted that the vehicle in



question is rotting under the open sky and till date, confiscation proceeding has not been initiated. Moreover, the petitioner is ready to undertake that he will neither transfer the ownership of the vehicle in question nor will he change the shape of the same and will produce before the Court concerned as and when required.

Mr. Vivek Prasad, learned G.P.-7 submits that in pursuance to the order dated 31.01.2020, the counter affidavit could not be filed since the concerned officers were busy in controlling the law and order situation in the State. It is further submitted that though confiscation proceeding, being Confiscation Case No. 262 of 2019 was initiated, but the same was initiated for destruction of the seized liquor and proposal/report for confiscation of the vehicle in question has still not been received in the office of the Collector-cum-District Magistrate, Samastipur.

Having heard learned counsels for the parties and considering their rival submissions, we are of the considered view that the FIR has been lodged and seizure has been made by ASI of Police whereas Section 73(e) of the Act stipulates that the seizure cannot be made by a police officer below the rank of Sub Inspector of Police. Hence, very seizure appears to be de



hors the provisions of the Act. Moreover, the confiscation proceeding has not been initiated with regard to the vehicle in question, and since about two lakh cases are pending under Excise Act in the State of Bihar, hence there is no likelihood of trial being concluded in near future. Moreover, the vehicle in question, at best, is only for the purpose of producing the same as material exhibit during trial.

In the facts and circumstances of the present case, no useful purpose will be served in allowing the vehicle to rot under open sky leading to a complete waste of public money, as 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.* reported in (2010) 6 Supreme Court Cases 768.

In the circumstances, we direct that the vehicle in question, bearing Registration No. BR-33-M-0674, Engine No. GHD1D30097, Chasis No. MA1ZN2GHKD1D38196 be released provisionally till the conclusion of the trial, if any, on the following conditions to the satisfaction of learned ADJ-II-cum-Special Judge (Excise), Samastipur of if confiscation



proceeding is initiated in the meantime, then to the satisfaction of Collector-cum-District Magistrate, Samastipur:

(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. 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 A.D.J.- II-cum-Special Judge, Excise, Samastipur 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 of release of vehicle will be done by the learned Court below within ten days of receipt/production of a copy of this order.

We hasten to add that observation, if any, in the present order, is only for the purpose of disposing the prayer for release of vehicle.

Accordingly, the writ application is allowed to the extent as indicated above.

**(Dinesh Kumar Singh, J)**

**( Anil Kumar Sinha, J)**

Amrendra/-

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