

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3214 of 2020

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Md. Sadre Alam, Son of Md. Atiqula, Resident of Village and P.O. Biraul, P.S.-
Pandaul, District-Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary Department of Excise and Prohibition Govt. of Bihar, Old Secretariat, Patna.
2. The District-Magistrate, Darbhanga.
3. The Superintendent of Police, Darbhanga.
4. The S.H.O. Manigachhi Police Station, Darbhanga, Bihar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Gagan Deo Yadav
For the Respondent/s : A.C. to S.C.-11.

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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. Gagan Deo Yadav, learned counsel for the petitioner and learned A.C. to S.C.-11 appearing for the respondents.

The present writ application has been filed for release of Three wheeler Tempoo bearing Registration No.BR-32PA 2136, in favour of petitioner, which has been seized in connection with Manigachhi P.S. Case No.30 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 the present Civil Writ petition is being filed for release of vehicle Tempoo, registration No.BR-32PA2136, Chasis No.MD2A72AZ4GWE04951, Engine No.BEZWGE29433 belongs to the petitioner, which has been seized by Manigachhi Police Station (Arising out of Manigachhi P.S. Case No.30 of 2019 dated 25.02.2019 registered under Sections 272, 273 of the I.P.C. and 30(a) of the Bihar Prohibition and Excise Act, 2016. The confiscation proceeding has been initiated against the petitioner's vehicle by District Magistrate, Darbhanga pending in the Court of learned A.D.J.-V-cum-Special Judge(Excise), Darbhanga.”

The prosecution case got initiated on the basis of written report of Assistant Sub Inspector of Police submitted to S.H.O. Manigachhi P.S. to the effect that on 25.02.2019, a three-wheeler Tempoo in question was intercepted and from the tempo in question, 15 litres of country made liquor was recovered, leading to registration of Manigachhi P.S. Case No.30 of 2019.

Learned counsel for the petitioner submits that the petitioner is registered owner of the vehicle in question and certificate to this effect has been brought on record as Annexure-2 to the writ application. It is further submitted by learned counsel for the petitioner that confiscation proceeding has been initiated vide Confiscation Case No.175 of 2019 and notices have been issued to the petitioner.

It is submitted by learned counsel for the State that Confiscation Proceeding with regard to the vehicle in question has



already been initiated, being Confiscation Case No.175 of 2019 and the same is pending before Respondent No.02, the Collector-cum-District Magistrate, Darbhanga. 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.

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

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, Darbhanga is expected to conclude the confiscation proceeding being Confiscation Case No.175 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, Darbhanga for its strict compliance.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

sanjeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	04.03.2020
Transmission Date	NA

