

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3002 of 2020

Harendra Manjhi @ Harendra Paswan @ Harendra Pasawan @ Harendra Kumar Paswan, aged about 28 years (Male), S/o- Bhola Manjhi, R/o Village + P.O.- Amardah, P.S.- Isuapur, District- Saran at Chapra.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department, Govt. of Bihar, Patna.
2. The District Magistrate Saran at Chapra.
3. The Superintendent of Police, Saran at Chapra.
4. The Station House Officer, Isuapur Police Station, District- Saran at Chapra.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ashok Kumar Prasad
For the Respondent/s : Mr. Akash Chaturvedi AC to SC11

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 Mr. Ashok Kumar Prasad, learned counsel for the petitioner and Mr. Akash Chaturvedi, learned AC to SC 11.

Learned counsel for the petitioner is permitted to make necessary correction in paragraph- 1 of the writ petition during the course of the day.

The present writ application has been filed for release of Passion Pro motorcycle bearing Registration no. BR04R-1546, which has been seized in connection with Isuapur P.S. Case No. 221 of 2019, registered for the offences punishable under Sections 279 & 337 of the Indian Penal Code, 1860 and Sections 37(b) and (c) of the Bihar Prohibition and Excise Act, 2016 as amended by Amendment Act 8 of 2018 [hereinafter referred to as 'the Act'].



The relief as prayed for in paragraph -1 of the writ petition reads as follows:-

“That this application is being filed for issuance of appropriate writ / order / direction granting following reliefs to the petitioner:-

(A) A Mandamus commanding the respondents for releasing the Passion Pro Motorcycle of the petitioner bearing Registration No. BR04R-1546 which was seized in Isuapur Police Station Case No. 221 / 2019 dated 21.10.2019 under Sections 279/ 337 of the Indian Penal Code and under Section 37(B),(C) of Bihar Liquor Prohibition and Excise Act, 2016 by the Police.

(B) Any other relief or reliefs for which petitioner may be found entitled to in the facts and circumstances of the present case may be granted to him”

The prosecution case as per the written report of Assistant Sub Inspector of Police, Kamlesh Prasad submitted to the Station House Officer, Isuapur P.S., to the effect that on 21.10.2019 the informant was on patrolling duty and he received a secret information that three persons in drunken condition have dashed one lady and a child. Consequently, three persons namely, Harendra Manjhi [petitioner], Chhotu Kumar and Manoj Kumar were apprehended and they were put to breath analyzer test, which



was found positive, leading to registration of Isuapur P.S. Case No. 221 of 2019.

It is submitted by learned counsel for the petitioner that he is the registered owner of the vehicle in question. The certificate of registration of the vehicle in question has been brought on record Annexure- 2 to the writ petition. The vehicle in question is rotting under the open sky and keeping the vehicle in such condition and allowing it to reduce into a junk would ultimately result into waste of public money and petitioner is ready to produce the vehicle in question after release of the same as and when directed by the concerned court or the confiscation authority and petitioner shall not change the shape of the vehicle in question or transfer the same creating any kind of adverse interest against the interest of the State during the pendency of the confiscation proceeding.

Learned counsel appearing for the respondent submits that though there is no recovery from the vehicle in question, but the petitioner and other were found in drunken condition. However, there is nothing on record to suggest that confiscation proceeding has been initiated and hence the question of recording preliminary finding to the effect that in a case of drunken condition the vehicle is liable to be confiscated as directed by a



Division Bench of this Court in order dated 22.03.2018 passed CWJC No. 5049 of 2018 does not arise.

Considering the rival submissions of the parties, since it is admitted position that there is no recovery of liquor from the vehicle in question whereas Section 56(b) of the Act mandates that the carriage of the vehicle is liable for confiscation only if it is used for carrying liquor or intoxicant. Section 37 of the Act is a complete Code prescribing the penalty for person being found in drunken condition in a public place or a private place. Since confiscation proceeding has not been initiated till date and the case was registered on 21.10.2019, allowing the vehicle to remain in seized condition will permit the vehicle to be reduced into a junk which is deprecated by the Hon'ble 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. Since there is huge pendency of cases relating to Excise Act and there is no likelihood of commencement of the trial in near future, in the circumstances, we direct for provisional release of the vehicle in question i.e. BR04R-1546 to the satisfaction of learned A.D.J. II cum Special Judge Excise, Saran at Chapra on the following conditions:-



(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. II-cum-Special Judge, Excise, Saran at Chapra 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 process shall be done by the learned court below within ten days from the date of receipt / production of a copy of this order subject to conditions mentioned above.

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 petition is disposed of.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

praful/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17-03-2020
Transmission Date	NA

