

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3332 of 2020

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Khushboo Kumari @ Khushbhu Devi , aged about 17 years, Sex - Female,
Daughter of Binod Paswan, Wife of Pritam Paswan, Resident of Village-
Karja Umraonganj, Police Station- Bihiya, District- Bhojpur at Present
residing at Village- Semariya, Police Station- Shahpur, District- Bhojpur

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department,
Patna, Bihar
2. The District Magistrate, Bhojpur, Arrah
3. The Superintendent of Police, Bhojpur, Arrah
4. The Officer-in-Charge of Police Station Shahpur Bhojpur,

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ashok Kumar Singh
For the Respondent/s : Mr.Kumar Pankaj AC to SC5

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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 : 03-03-2020

Heard Mr. Ashok Kumar Singh, learned counsel for the
petitioner and Mr. Kumar Pankaj, learned AC to SC -5.

The present writ application has been filed for release of
Glamour motorcycle bearing Registration No. BR03X-4542,
which has been seized in connection with Shahpur P.S. Case No.
179 of 2019, registered for the offence punishable under Section
30(a) of the Bihar Prohibition and Excise Act, 2016 as amended by
the Amendment Act 8 of 2018 (hereinafter referred to as “the
Act”)



The relief as prayed for in paragraph no. 1 of the writ petition reads as follows:-

“That, the present writ petition has been filed by the petitioner for the issuance of appropriate writ / writs or, order / orders or direction / directions, to the respondents concerned for release of vehicle (Glamour Motorcycle) bearing Registration No. BR03X-4542, Engine Number. JA06EH-J9B03203 and Chassis Number MBLJAR016J9B02515 seized in connection with the Shahpur Police Station Case No. 179 of 2019 dated 20.07.2019”

The prosecution case as per the written report of Assistant Sub Inspector of Police Ramsewak Singh submitted to the Station House Officer, Shahpur P.S. is to the effect that on 20.07.2019 during the raid a secret information was received that two persons are carrying liquor on a motorcycle and consequently the motorcycle in question was intercepted from which tube bags filled with 40 liters of country made liquor was recovered and two persons were apprehended, who disclosed their names as Prittam Paswan and Kamlesh Paswan. Thereafter, Prittam Paswan's hutment was raided and altogether 55 of liters of country made liquor was seized from a plastic bag, leading to registration of Shahpur P.S. Case No. 179 of 2019.



Learned counsel for the petitioner submits that petitioner is the owner of the vehicle in question. The certificate of registration of the vehicle in question has been brought on record as Annexure -2 to the petition. Petitioner was admittedly not travelling on the motorcycle in question. The motorcycle is rotting under the open sky and keeping the vehicle in such condition and allowing it to reduce it into a junk would ultimately result into waste of public money which has been 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. He further submits that the petitioner is ready to produce the vehicle in question as and when required by the concerned Court and will not change the shape of the motorcycle or transfer the same during the pendency of confiscation proceeding, initiated if any. He further submits that no confiscation proceeding has been initiated till date.

Counter affidavit filed on behalf of the respondent no. 2 i.e. District Magistrate, Bhojpur, Arrah dated 18.02.2020 reflects that no proposal or report under Section 58 (1) of the Act has been received though the vehicle is liable to be confiscated since the



seizure of liquor has been made. The statement to that effect has been made in paragraph nos. 11 and 13 of the counter affidavit, which reads as follows:-

“11. That with regards to the statement made in para – 6 of the writ petition it is humbly stated and submitted that, it is submitted that confiscation proceeding for confiscation of the vehicle in question has not yet been initiated awaiting necessary papers and report from the Police.

13. That with regards to the statement made in Para -11 to 15 of the writ petition it is humbly stated and submitted that the Police has rightly and lawfully seized the vehicle in question and the same is liable for confiscation. It is submitted that confiscation proceeding for confiscation of the vehicle in question has not yet been initiated awaiting necessary papers and report from the Police. But on this ground the petitioner cannot get release of the vehicle in question since the vehicle has been used for carrying incriminating article- illicit country liquor and thus the same is liable for confiscation. It is submitted that the vehicle in question has been kept in the safe custody of the police and there is no chance of its deterioration as alleged by the petitioner.”

Mr. Kumar Pankaj, learned AC to SC- 5 submits that since liquor has been recovered from the motorcycle of the petitioner, hence the vehicle in question is liable for confiscation ,



but no proposal / report has been received by the Collector, Bhojpur, Arrah under under Section 58 of the Act.

Considering the rival submissions of the parties as well as the fact that it is admitted position that confiscation proceeding has not been initiated though the seizure was made on 20.07.2019 whereas, the provision under Section 58(1) of the Act mandates that report has to be transmitted by the seizing or detaining authority to the Collector of the area having jurisdiction for anything which is liable to be confiscated under Section 56 of the Act without reasonable delay, in these circumstances allowing the vehicle to reduce into junk as there is no likelihood of the trial being concluded in near future due to huge pendency of the cases under the Act in question will serve no purpose.

In view of the above stated facts and circumstances, we direct for the provisional release of the vehicle in question bearing Registration No. BR03X-4542 till the conclusion of the trial or if confiscation proceeding is initiated in the meantime, till the confiscation proceeding is concluded to the satisfaction of learned A.D.J II -cum- Special Judge, Excise, Bhojpur, Arrah or District Magistrate, Bhojpur, Arrah 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, Bhojpur, Arrah or the District Magistrate, Bhojpur, Arrah, 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.

We, however, make it clear that we have not expressed our opinion with regard to the petitioner being the owner of the vehicle in question or the merit of accusation.

It is expected from the concerned court to conclude the release process within ten days from the date of receipt / production of a copy of this order.

The writ petition is disposed of.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

praful/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18-03-2020
Transmission Date	NA

