

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3013 of 2020

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Lalan Paswan @ Lalan Ram, S/o Ramchandra Paswan, resident of Village-Bihta English, P.S. Tarari, Dist- Bhojpur at Ara.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department, Government of Bihar, Old Secretariat, Patna.
2. The District Magistrate, Bhojpur at Ara.
3. The Superintendent of Police, Bhojpur at Ara.
4. The S.H.O, Bhojpur Police Station, Bhojpur at Ara.
5. I.O of the case at Police Station Bhojpur at Ara.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Jitendra Singh

For the Respondent/s : Mr. Rewati Kant Raman, AC to SC 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 : 25-02-2020

Heard Mr. Jitendra Singh, learned Counsel for the petitioner and Mr. Rewati Kant Raman, learned Assistant Counsel to Standing Counsel No. 11 for the respondents.

The present writ application has been filed for release of Bajaj Discover motorcycle, bearing Registration No. BR03H-5565, which has been seized in connection with Tarari Police Station Case No. 217 of 2019, registered for the offence punishable 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 relief, as prayed for, stipulated in paragraph 1 of the writ application, reads as follow:-

“That the present writ petition is being filed for release of Discover motorcycle bearing registration no. BR03H5565 Chassis No. MD2DSPAZZTPEO1293 and Engine No. JBUBTE03165 belong to the petitioner, which has been seized by A.S.I. Virencra Kumar Sahani SHO Bhojpur at Ara Police Station. Arising out of Tarari P.S. case No. 217/2019 dated 30.11.2019 registered under section 30 (a) of Bihar Prohibition and Excise Act, 2016, this case is pending before the learned Special Judge, Excise-IVth, A.D.J., Bhojpur at Ara and seized vehicle, which is lying in the open sky without any wrong.”

The prosecution case, as per the written report of Virendra Kumar Sahani, Assistant Sub Inspector of Police, Tarari Police Station, submitted to the Station House Officer, Tarari Police Station, is to the effect that on 30.11.2019 at 10:45 AM, during the vehicle check, two persons were found coming on a Discover motorcycle when on seeing the police party, one person fled away and another person was apprehended, who disclosed his name as Amit Kumar and he has also disclosed the name of the person who fled away as Vikash Kumar. Thereafter, at the instance



of apprehended Amit Kumar, a raid was laid in the house of one Sushil Singh and from the roof of the said house, 09 litres of Indian Made Foreign Liquor was recovered. From the bag being carried by Amit Kumar, 2.25 litres of Indian Made Foreign Liquor was recovered, leading to the registration of Tarari Police Station Case No. 217 of 2019.

It is submitted by learned Counsel for the petitioner that the petitioner is the registered owner of the vehicle in question and the certificate of registration of the seized vehicle has been brought on record by way of Annexure-2 to the writ petition. The vehicle is rotting under the open sky. It is further submitted that confiscation proceedings has not been initiated. The petitioner is ready to produce the motorcycle in question as and when required by the Court concerned and undertake not to change the shape and nature of the motorcycle in question and also not to transfer or alienate the motorcycle in question.

Mr. Rewati Kant Raman, learned Assistant Counsel to Standing Counsel No. 11, relying on the counter affidavit filed on behalf of respondent no. 2, District Magistrate, Bhojpur, at Ara, submits that till date, no confiscation proceeding has been initiated and statement to this effect has been made in paragraph 14 of the counter affidavit. However, since the liquor was recovered from



the vehicle in question, hence the same is liable to be confiscated under Section 56 (b) of the Act.

Having heard learned Counsel for the parties and on perusal of the record, it appears that the seizure has been made by the Assistant Sub-Inspector of Police, which is evident from the very opening line of the written report. Section 73(e) of the Act mandates the seizure to be made by a police officer not below the rank of Sub-Inspector of Police. Hence the seizure is contrary to the provisions of the Act.

Keeping in view the fact that the First Information Report was registered on 30.11.2019, there is nothing on record to show that any confiscation proceeding has been initiated, whereas Section 58 (1) of the Act mandates the transmission of the report to the District Magistrate having jurisdiction for anything which is liable to be confiscated under Section 56 of the Act by the seizing or detaining authority without any reasonable delay.

In the circumstances in our view, allowing the vehicle to turn into junk will be contrary to the ratio laid down by the Supreme Court, in the cases of **Sunderbhai Ambalal Desai Vs. State of Gujrat and other**, reported in (2002) 10 SCC 283 and **General Insurance Council and Ors. Vs. State of Andhara Pradesh and Ors.**, reported in (2010) 6 SCC 768.



Moreover, more than two lakh cases have been registered in the State of Bihar, there is no likelihood of the trial being concluded in near future, we are constrained to direct that the vehicle in question be released provisionally till the conclusion of the trial, if any, to the satisfaction of learned Additional Sessions Judge-II -cum- Special Judge, Excise, Bhojpur at Ara or if confiscation proceeding has been initiated, to the satisfaction of the District Magistrate -cum- Collector, Bhojpur, 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 learned Additional Sessions Judge-II -cum- Special Judge, Excise, Bhojpur at Ara or the District Magistrate -cum- Collector, Bhojpur, 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 will be done by the learned Additional Sessions Judge-II -cum- Special Judge, Excise, Bhojpur at Ara or the District Magistrate -cum- Collector, Bhojpur, 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 this case 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.)

Prabhakar Anand/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	03-03-2020
Transmission Date	N/A

