

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.3063 of 2020

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Lalu Kumar, Son of Dinesh Varma @ Dinesh Prasad, Resident of Village-
Lala Bhadsara, P.S.- Dulhin Bazar, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise and Prohibition Department, Govt. of Bihar, Patna.
2. The District Magistrate cum Collector, Patna.
3. The Senior Superintendent of Police, Rural, Patna.
4. The Superintendent of Police, Patna.
5. The Officer-in-Charge, Police Station- Dulhin Bazar, District- Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Rakesh Kumar
For the Respondent/s : Ms. Manisha Singh, AC to 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 : 25-02-2020

Heard Mr. Rakesh Kumar, learned Counsel for the petitioner and Ms. Manisha Singh, learned Assistant Counsel to Government Pleader No. 7 for the respondents.

The present writ application has been filed for release of TVS Apache RTR 160 motorcycle, bearing Registration No. BR56B-7800, which has been seized in connection with Dulhin Bazar Police Station Case No. 338 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 petition is being preferred on behalf of the petitioner above named invoking the extra ordinary jurisdiction of this Hon’ble Court for issuance of appropriate writ/writs, order/orders, direction/directions to respondents for release the Motorcycle Apache RTR 160 Registration no. BR56B 7800 bearing Chasis No. MD634CE47K2D06761 and Engine No. CE4DK2906261, which has been seized in connection with Dulhin Bazar P.S. Case No. 338/19 dated 29/12/2019 registered under section 30 (a) of Bihar Prohibition and Excise Act, 2018, which is pending before Special Judge, Excise, Patna and/or for grant of ant other relief/reliefs for which the petitioner is entitled.”

The prosecution case, as per the written report of Arun Kumar Pandey, Assistant Sub Inspector of Police, Dulhin Bazar Police Station, submitted to the Station House Officer, Dulhin Bazar Police Station, is to the effect that on 29.12.2019, at 12:45 PM, during the vehicle check up, one Apache motorcycle, with three persons on it, was intercepted, who disclosed their names as Lalu Kumar, Bhola Kumar and Raju Kumar (the petitioner) and



from the red bag carried by Raju Kumar, 750 ML Indian Made Foreign Liquor was recovered, leading to the registration of Dulhin Bazar Police Station Case No. 338 of 2019. However, nothing was recovered from remaining two persons.

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 undertakes not to change the shape and nature of the motorcycle in question and also not to transfer or alienate the motorcycle in question.

Ms. Manisha Singh, learned Assistant Counsel to Government Pleader No. 7, relying on the counter affidavit filed on behalf of respondent no. 2, the District Magistrate -cum- Collector, Patna, dated 24.02.2020, submits that till date, no proposal/report for initiation of confiscation proceeding has been transmitted by seizing or detaining authority and statement to this effect has been made in paragraph 5 of the counter affidavit. However, since the liquor was recovered from the vehicle in



question, accordingly 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 by a police officer not below the rank of Sub-Inspector of Police. Hence the seizure is contrary to the provisions of the Act.

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.

Keeping in view the fact that the First Information Report was registered on 29.12.2019, but there is nothing on record to show that any confiscation proceeding has been initiated, whereas Section 58 (1) of the Act mandates transmission of a report by seizing or detaining authority of anything / property to District Collector having jurisdiction over the place of seizure without reasonable delay which is liable to be confiscated under



Section 56 (b) of the Act, coupled with the fact that 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, Patna and if confiscation proceeding has been initiated, to the satisfaction of the District Magistrate -cum- Collector, Patna, 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, Patna at Ara or the District Magistrate -cum- Collector, Patna, 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, Patna, or the District Magistrate -cum- Collector, Patna, within three weeks 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	29-05-2020
Transmission Date	N/A

