

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2801 of 2020

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Dev Narayan Pal @ Devnarayan Pal S/o Hira Lal Pal R/o Dundi Bag Bazar,
Bokaro Steel City, P.S.- City, District- Bokaro, Jharkhand, Pin Code- 827012.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Prohibition and Registration Department, Government of Bihar, Patna.
2. The Collector cum District Magistrate, Patna.
3. The Superintendent of Excise, Patna.
4. The Superintendent of Police, Patna.
5. The Officer-in-Charge, Dhanarua P.S., District- Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Arvind Kumar Pradhan
For the Respondent/s : Mr.Vivek Prasad (GP 7)
Mrs. 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 : 18-02-2020

Since counter affidavit on behalf of Respondent
No. 2, the Collector-cum-District Magistrate, Patna has been
filed, this writ application has been heard on merits and is
being disposed of.

Heard learned counsels for the parties.

The present writ application has been filed for
release of Santro car of the petitioner bearing
Registration No. JH09AD 0517, which has been seized in
connection with Dhanarua P.S. Case No. 241 of 2019,



registered for the offence 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 prayer as is contained in paragraph no.1(i) of the writ application, reads as follows:-

“1.(i) For direction/order to the respondent no. 2 and 5 to release of vehicle in question Santro Motor car bearing registration number JH09AD0517, chasis no. MALAB51HR5M641705 and engine no. G4HD5M555013 in favour of the petitioner, which has been seized in connection with Dhanarua P.S. Case No. 241/19 dated 22.06.19 registered under sections 30(a) of the Bihar Excise and Prohibition Act (Amendment).”

The prosecution case, as per the written report of A.S.I. Rajesh Kumar Yadav of Dhanarua Police station is to the effect that on 22.6.2019 during raid and vehicle check at 1.30 A.M. the vehicle in question was intercepted in which two persons, namely, Mithilesh Kumar and Ramesh Kumar were travelling and from the vehicle in question, 75.375 litres of Indian Made Foreign Liquor were recovered leading to registration of Dhanarua P.S. Case No. 241 of 2019, against the two persons but the petitioner was not made accused. However, accused no. 3 has been named as Maruti Santro car in question with its registration number.



It is submitted by learned counsel for the petitioner that the petitioner is the registered owner of the vehicle in question and certificate of registration has been brought on record as Annexure-2 to the writ application. The petitioner was not named in the FIR and he has not received any notice. It is further submitted that the vehicle in question is rotting under the open sky. The petitioner is ready to produce the vehicle in question as and when required by the court concerned and undertakes not to alter the shape of the same or create any third party right in vehicle in question.

Mrs. Manisha Singh, learned AC to GP 7 relying upon the counter affidavit filed on behalf of respondent no. 2, Collector, Patna submits that the Senior Superintendent of Police, Patna vide letter no. 4117 dated 26.8.2019 transmitted report to the Collector, Patna for confiscation and destruction of seized liquor. Consequently, Confiscation Case No. 1294 of 2019-20 was initiated and vide order dated 28.8.2019 seized 73.375 litres Indian made foreign liquor has been confiscated and SDO, Mashaurhi has been directed to destroy the same. However, no report was transmitted to Collector for confiscating the vehicle in question. However, since the liquor was recovered from the



vehicle in question, the same is liable for confiscation under Section 56 of the Act.

Having heard learned counsels for the parties, we find that the seizure has been prepared by the ASI whereas Section 73(e) of the Act mandates that the seizure can only be made by an officer not below the rank of Sub Inspector. Seizure or detention of the intoxicant is a *sine qua non* for initiating a proceeding under Section 58 of the Act. No doubt the vehicle in question is liable for confiscation under Section 56(b) of the Act since the same was used for carrying liquor. However, it is admitted position that the confiscation proceeding has not been initiated whereas Section 58(1) of the Act mandates the report to be submitted by the seizing or detaining authority for initiation of confiscation proceeding.

In the circumstances, in our view, no useful purpose will be served in allowing the vehicle to reduce to junk, only for the purpose of being produced as material evidence during trial, particularly in view of the fact that the trial, if any, is not likely to be concluded in near future, considering the pendency of two lakh cases having been registered in the State of Bihar under the provisions of the



Excise Act.

Keeping the vehicle in such condition and allowing to reduce it into junk, would ultimately result into wastage of public money and such practice has been deprecated by the Supreme Court in the case of *Sunderbhai Ambalal Desai Vs. State of Gujrat* and other analogous cases (2002) 10 SCC 283 and in the case of *General Insurance Council and Ors. Vs. State of Andhara Pradesh and Ors.* (2010) 6 Supreme Court Cases 768. We, accordingly, direct the provisional release of Santro car, bearing registration no. JH09AD- 0517 that the same be released till the conclusion of the trial or confiscation proceeding if initiated in the meantime, on the following conditions to the satisfaction of learned Additional District and Sessions Judge-cum-Special Judge (Excise) or Collector, Patna:

(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. 1,00,000/- 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.-cum-Special Judge, Excise, Patna 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, if any or trial;

(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 of the vehicle in question will be done by the learned Court below 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 accusation 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)

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AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

