

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3596 of 2020

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Jay Kishor Prasad Son of late Jhulan Prasad, Resident of Village- Gopalpur,
Mora Police Station- Siwan Mufassil, District- Siwan.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Excise
Govt. of Bihar, Patna.
2. The District Magistrate, Siwan.
3. The Superintendent of Police, Siwan.
4. The Officer in Charge, Bhagwanpur Hat, Police Station, District- Siwan.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ashok Kumar
For the Respondent/s : Mr.Vikash Kumar (Sc11)

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

(The proceedings of the Court are being conducted through Video Conferencing and the Advocates joined the proceedings through Video Conferencing from their residence.)

Date : 09-07-2020

Heard learned counsel for the petitioner and the State.

Petitioner has prayed for following reliefs:-

“ (i) For issuance of writ in the nature of mandamus to direct the respondents to release the vehicle i.e. Hero Splendor Pro Motor Cycle bearing Registration No.BR-29L-6295, Chassis No.MBLHA10ASCHL55414, Engine No.HA10ELCHL32789 of the petitioner which was seized in connection with Bhagwanpur Hat P.S. Case No.30 of 2018 registered U/ss 272, 273, 308, 420 of I.P.C. and Sections 30(a), 41(1) of the Bihar Prohibition and Excise Act, 2016.



(ii) For direction to the respondents to release the vehicle i.e., Hero Splendor Pro Motor Cycle bearing Registration No.BR-29L-6295 as he is registered owner of the said vehicle.

(III.) For any other relief or reliefs for which the petitioner is entitled in the facts and circumstances of the case.”

Informant is a police officer who in his complaint has alleged that he received a secret information that miscreants are unloading illicit liquor from vehicle and as he reached said place, he found few motorcycles and four-wheelers parked there and two miscreants were arrested, however, others managed to escape and from a asbestos house and partially constructed house, illicit liquor was recovered and two motorcycles parked there were seized for which FIR was lodged giving rise to Bhagwanpur Hat P.S. Case No.30 of 2018 registered under Sections 272, 273, 308, 420 of IPC and Sections 30(a), 41(1) of Bihar Prohibition and Excise Act, 2016.

It is submitted on behalf of petitioner that no illicit liquor has been recovered from the seized vehicle which is apparent from the FIR as well as seizure memo as such seized vehicle is not liable for confiscation under Section 56 of the Excise Act and bar of jurisdiction in confiscation as contemplated under Section 60 of the Act is not applicable and the Special Court, Excise where the excise case is pending has



jurisdiction to pass order of provisional release of the vehicle.

In view of law laid down by Division Bench of this Court in case of Diwakar Kumar Singh vs. State of Bihar since reported in 2018 (3) PLJR 403 and following said judgment as well as other judgments passed by this Court, the Excise Commissioner, Bihar Patna in appeal arising out of Confiscation Case No. 107 of 2019 Ajit Roy Vs. Collector, Sheohar has held that transportation of prohibited article under the Act is a sine qua non for a vehicle to be confiscated.

The relevant paragraph of order passed in Appeal by Excise Commissioner is quoted below:-

“From the aforesaid judgment and order passed by the Hon’ble High Court of Patna it is well established that the transportation of prohibited article under the Act, 2016, is a sine qua non for a vehicle to be confiscated on the passing of an order by the District Collector. Therefore the confiscation order passed by the learned Collector, Sheohar in confiscation Case No. 107/2019 on 09.12.2019 is hereby ordered to be modified to the extent that the three motorcycles bearing registration No. BR-06BJ 6591; BR-06BL 5384 and BR-55 4036 will be released after verifying the document related to registration and owner of the said vehicle.”

It is submitted that no confiscation proceeding has been initiated by the District Collector against the said vehicle, however, if any, confiscation proceeding has been initiated,



same is directed to be dropped.

Accordingly, petitioner is directed to file an application before the concerned Special Court (Excise) under Section 451 of Cr.P.C. for interim release of the vehicle which has been seized by the police in the case as same are not liable for confiscation and as such it is the Special Court (Excise), which can pass an order for interim release of the vehicle, with terms and conditions of release as usually imposed. If any such application is filed by the petitioner same to be disposed of within 30 days from the filing of said application.

With the aforesaid observation and direction, this writ petition is disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.07.2020
Transmission Date	NA

