

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3228 of 2020

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Srikant Sah, Son of Rasik Sah Resident of Village Gouripur, Ranuchak,
Makandpur P.S.- Akbarnagar, District- Bhagalpur.

... .. Petitioner/s

Versus

1. The State of Bihar, Through Principal Secretary, Excise Department,
Government of Bihar, Patna.
2. District Magistrate Banka.
3. Superintendent of Police Banka.
4. Superintendent of Excise Banka.
5. Inspector Excise Prohibition, Banka.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Rajiv Kumar Singh
For the Respondent/s : A.C. to S.C.-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 : 27-02-2020

Heard Mr. Rajeev Kumar Singh, learned counsel for
the petitioner and learned A.C. to S.C.-11 appearing for the
respondents.

The present writ application has been filed for release of
Scorpio bearing Registration No.BR-10PA-0517, in favour of
petitioner, which has been seized in connection with Excise
Complaint Case No.135 of 2019, registered for the offences
punishable under Section 30(a) of Bihar Prohibition and Excise
Act, 2016, as amended by the Amendment Act 8 of 2018
(hereinafter referred to as 'the Act').



The relief, prayed for by learned counsel for the petitioner, as stipulated in paragraph No.1 of the writ application reads as follows :-

“1. (i) A writ in the nature of Mandamus commanding the respondents to release the Scorpio bearing Registration No.BR10PA-0517 standing in petitioners name since the same lying seized in connection with Excise Complaint Case No.135 of 2019 dated 14.11.2019 instituted for offences under Section 30(a) of Bihar Prohibition and Excise (Amendment) Act, 2018.

(ii) A writ in the nature of certiorari quashing the action of illegal seizure of the petitioner's vehicle Scorpio by the Inspector Excise and Prohibition Banka.

(iii) Any other relief to which the petitioner is found entitled to.”

The prosecution case is that on 14.11.2019 at about 6:40 A.M., a secret information was received that illicit foreign liquor is being transported from Bhagalpur through Scorpio vehicle, whereupon the vehicle in question has been intercepted by the Excise officials and 135 litres of foreign liquor were recovered and the vehicle was seized, leading to registration of Excise Complaint Case No.135 of 2019.

Learned counsel for the petitioner submits that the petitioner is the registered owner of the vehicle in question and certificate to this effect has been brought on record as Annexure-2 to the writ application. It is further submitted by learned counsel for the petitioner that confiscation proceeding has been initiated



vide Confiscation Case No.484 of 2019-20. Statement to that effect has been made in para-13 of the writ application.

It is submitted by learned counsel for the State that Confiscation Proceeding with regard to the vehicle in question has already been initiated, vide Confiscation Case No.484 of 2019-20 and the same is pending before Respondent No.02, the Collector-cum-District Magistrate, Banka. In such circumstances, learned counsel for the respondent-State has no objection if the writ application is disposed of directing the concerned respondents to conclude the confiscation proceeding within a time frame, if the same has not been concluded.

Considering the fact that once the confiscation proceeding is initiated, the exercise of discretionary jurisdiction under Article 226 of the Constitution of India, having self imposed restriction can be exercised in exceptional or a monstrous situation, such as when fundamental rights have been violated, the impugned order or the proceedings are wholly without jurisdiction or where the principle of natural justice has been grossly violated or vires of the Act is under challenge. Considering the view taken by the Apex Court in the case of **State of Karnataka Vs. K. Krishnan (2000) 7 Supreme Court Cases 80** and in the case of **State of West Bengal and Ors. Vs. Sujit**



Kumar Rana, (2004) 4 Supreme Court Cases 129, a Full Bench of this Court in the case of **Baleshwar Roy Vs. The State of Bihar and Ors , 2018(4) PLJR 970**, we are not inclined to pass order for release of the vehicle for the present.

The Collector-cum-District Magistrate, Banka is expected to conclude the confiscation proceeding being Confiscation Case No.484 of 2019-20, within a period of six weeks of receipt or production of the order in accordance with law.

The petitioner is also expected to appear regularly and participate in the confiscation proceeding.

Accordingly, with the above observation and direction, the present writ application is disposed of.

The office is directed to communicate this order to the District Magistrate, Banka for its strict compliance.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

sanjeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.03.2020
Transmission Date	NA

