

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5064 of 2019

Sanjay, Son of Chander Singh, Resident of Village- 406 Bari Nagar Gali No. 1, Bahadurganj, P.S. and District- Jhajjar, Haryana, at present R/o House No. 102, Extension 111, Nangloi, Delhi 110041.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Department of Excise, Govt. of Bihar, Patna.
2. The District Magistrate, East Champaran, Motihari.
3. The Superintendent of Police East Champaran, Motihari.
4. The Officer in Charge, Dumariyaghat Police Station District- East Champaran, Motihari.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Dhurendra Kumar
For the Respondent/s : Mr.Anil Kumar Sinha(Ga1)

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. Dhurendra Kumar, learned counsel for the petitioner and learned A.C. to S.C.-11 appearing on behalf of the respondents.

The present writ application has been filed for release of Maruti Swift Desire bearing Registration No.HR-13M-2551 in favour of the petitioner, which has been seized in connection with Dumariyaghat P.S. Case No. 53 of 2018, registered of the offences punishable under Section 30(a) of the Bihar Prohibition and



Excise Act, 2016, as amended by the Amendment Act 8 of 2018 (hereinafter referred to as 'the Act').

The relief, as prayed for in paragraph No.1 of the writ application reads as follows :-

"1. (i) For issuance of writ in the nature of Mandamus to direct the respondents to release the vehicle, i.e., Maruti Swift Desire bearing Registration No.HR-13M-2551, Engine No.K12MN2026810, Chasis No.MA3CZF63SHG149302, Model No.9 of 2017 of the petitioner which was seized in connection with Dumariyaghat P.S. Case No.53 of 2018 registered u/ss 272, 273, 420, 467, 468, 471, 34 of I.P.C. & Sections 30(a) of the Bihar Excise and Prohibition Act, 2016.

(II) For direction to the respondents to release the vehicle, i.e, Maruti Swift Desire bearing Registration No.HR-1M-2551, Engine No.K12MN2026810, Chasis No. MA3CZF63SHG149302 as he is the registered owner of the said vehicle.

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

The prosecution case got initiated as per the written report of Ram Babu Singh, Sub Inspector of Police, submitted to S.H.O. Dumariyaghat P.S. is to the effect that on 25.03.2018 during vehicle checking, one swift desire car was intercepted and the driver disclosed his name as Surendra Singh. From the vehicle in question 253.5 litres of Indian Made Foreign Liquor were recovered leading to registration of Dumariyaghat P.S. Case No.53 of 2018.

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 of the writ application and the vehicle is rotting in the open.

Relying upon the counter affidavit filed on behalf of the respondent No.3, Superintendent of Police, East Champaran at Motihari which only suggests that the proposal for initiating confiscation proceeding was transmitted to District Magistrate, East Champaran at Motihari vide letter No.1297 dated 25.06.2019. However, it is submitted by learned counsel for the respondent that Confiscation Case No.249 of 2019 has been finally initiated on 22.10.2019.

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** and considering the ratio laid down by



the 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.

In view of the discussion made above, respondent No.2, District Magistrate, East Champaran, Motihari is expected to conclude the proceeding of Confiscation Case No.249 of 2019, 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, East Champaran, Motihari for its strict compliance.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

sanjeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	24.03.2020
Transmission Date	NA

