

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 3159 of 2020

=====

Umesh Pasi S/o Yamuna Pasi Resident of Village- Kathaiya Bishunpura, P.S.-
Nautan (Jagdishpur), District- West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Excise and Prohibition Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Excise and Prohibition Department, Govt. of Bihar, Patna.
3. The Collector-cum- District Magistrate West Champaran at Bettiah.
4. The Superintendent of Police Bettiah, West Champaran.
5. The Officer-in- Charge Nautan (Jagdishpur) Police Station, Jagdishpur, District- West Champaran.
6. The Investigating Officer Nautan (Jagdishpur) P.S. Case No. 494/2019, Jagdishpur, District- West Champaran.

... .. Respondent/s

=====

Appearance :

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

=====

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 09-07-2020

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

Heard learned counsel for the petitioner and learned counsel for the State.

Petitioner has prayed for following reliefs:-

“For issuance of a writ in the nature of mandamus or any other appropriate writ,



order/s direction commanding the respondents to release the Splendor Plus Motorcycle of the petitioner bearing registration No. BR-22V/7856 which has been seized in connection with Nautan (Jagdishpur) P.S. Case No. 494/2019 registered u/ss. 414 and 30(a)/32 of the Bihar Prohibition and Excise Act, 2016.”

Informant is the Police Officer, who in his written complaint has stated that he received confidential information that accused Laddu Kumar, Babloo Choudhary, Krishna Mahto and Amar Mahto are involved in trade of illicit liquor and thereafter raid was conducted in the house of FIR named accused and from search of house of Laddu Kumar 4 litres of country made liquor kept in plastic jug was recovered and apart from it three motorcycles, including the motorcycle in question, kept in the house were also recovered and seized and accused confessed that he used seized motorcycle for transportation of illicit liquor.

It is submitted on behalf of petitioner that from the FIR as well as seizure memo it is apparent that no illicit liquor was recovered from the seized motorcycle, as such, seized motorcycle is not liable for confiscation under Section 56 of the Excise Act and bar of jurisdiction under Section 60 of the Excise Act is not applicable and Special Court (Excise) has



jurisdiction to release the vehicle during pendency of criminal case. The Excise Commissioner, Bihar Patna in appeal arising out of Confiscation Case No. 107 Ajit Roy Vs. Collector, Sheohar on the basis of judgment and order passed by this Court 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 none 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 Special Court (Excise), West Champaran, Bettiah 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)

veena/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	
Transmission Date	N.A.

