

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5219 of 2020

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Umesh Mochi @ Umesh Ram Son of Ram Ratan Mochi, Resident of Village-
Adlipur, Neora, Police Station-Neora, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Prohibition and Excise Department, Bihar, Patna.
2. The Principal Secretary Home Department Bihar, Patna.
3. The District Magistrate, Patna.
4. The Senior Superintendent of Police, Patna.
5. Police S.H.O. Kagaul Police Station, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sayed Imran Ghani
For the Respondent/s : Mr.Kumar Mainsh (Sc5)

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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 learned
counsel for the State.

Petitioner has prayed for following relief:-

- (i) For issuance of writ(s), order(s) or directions in the nature of mandamus directing and commanding upon the respondents authorities to release the vehicle (Auto) of the petitioner which bearing Registration No. BR-01-PH-1811, Chassis No.MBX0000ZFUG315409 and Engine No.S6F8582840 which has been seized in connection with offences under Section 37(B) of Bihar Prohibition and



Excise Act, 2016 in Khagaul Police Station Case No.77/2018 and Special Case No.3137/2018.

(ii) For issuance of any other appropriate writ order or direction which your Lordships may deem fit and proper in the facts and circumstances of the case.”

Allegation is that three persons were sitting in a tempo in a drunken condition and thereafter they were arrested and the tempo was seized giving rise to Khagaul P.S. Case No.77 /18 dated 2.4.18 under Section 37(b) of the 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	29.07.2020
Transmission Date	NA

