

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5820 of 2020

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Alok Kumar Son of Vijindra Prasad @ Bijendra Prasad, Resident at Mohalla-Sheikhpura, Dih, Police Station Tharthari, District- Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Bihar Prohibition and Excise Department, Bihar, Patna.
2. The Principal Secretary, Bihar Prohibition and Excise Department, Bihar, Patna.
3. The District Magistrate, Nalanda District- Nalanda.
4. The Superintendent of Police, Nalanda District- Nalanda.
5. The Thana-In-Charge, Parwalpur, Police Station, District- Nalanda.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Rabindra Prasad Singh
For the Respondent/s : Mr.Vivek Prasad (Gp7)

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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:-

“This writ application is being filed on behalf of the petitioner for issuance of an appropriate order/orders, direction/directions, writ in the nature of mandamus directing and commanding the respondents to release the vehicle bearing Apache Motorcycle Registration No.BR-21R 4673 Engine



No.BE4LH2705915 Chassis No.MD634 BE4X H2L07421 of the petitioner which was seized by the police in connection with Parwalpur P.S. Case No.306/2019 dtd. 14.12.19 offence u/s 30(a) 37(2)(c) of Bihar Prohibition and Excise Amendment Act.

(ii) And further be pleased to grant other relief/ reliefs as the petitioner is entitled.”

I.

Informant is a police officer who has alleged in his complaint that on receiving confidential information that few miscreants are consuming illicit liquor in a Bolero vehicle and Apache motorcycle and also selling illicit liquor, he raided said place, however, 4-5 miscreants managed to flee away and on search of Bolero vehicle 75 ml. of illicit liquor was recovered and a motorcycle was also parked there and thereafter illicit liquor, bolero vehicle and Apache motorcycle were seized and FIR was instituted giving rise to Parwalpur P.S. Case No.306 of 2019.

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 confiscation proceeding has been initiated by the District Collector against the said vehicle.

The writ petition is disposed of with a direction to the



Collector, Nalanda to dispose of the proceeding at the earliest
taking into consideration the observations as made above.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-

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

