

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7601 of 2020

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Bikash Paswan Son of Bhushan Paswan, Resident of Village Sahuri, Ward no.5, P.S. Birpur, District-Begusarai

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department, Govt. of Bihar, Patna.
2. The Collector -Cum-District Magistrate, Begusarai,
3. The Superintendent of Police, Begusarai,
4. The SHO, Birpur Police Station, Begusarai.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jitendra Narain Sinha, Advocate
For the Respondent/s : Mr. Vikash Kumar, SC11

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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 : 14-09-2020

Heard the parties.

Petitioner has prayed for following reliefs:-

(A) For release of the vehicle by quashing the order dated 19.02.2020 passed by the learned Additional Sessions Judge, 2nd-cum-Special Judge, Excise Begusarai in Birpur P.S. Case No.131 of 2019 registered under Section 30(a) of the Bihar Excise and Prohibition Amendment Act, 2018 whereby and whereunder the learned Judge has been pleased to refuse the prayer of the petitioner to release the motorcycle in his favour vide Hero Passon Pro motorcycle bearing registration No.BR09W-7562, Chassis No.MBLHAS124HHE01403, Engine No.HA10ACJJE71315, which has been illegally



seized and kept in open sky in abandoned condition in connection with Birpur P.S. Case No.131 of 2019 registered under Section 30(a) of the Bihar Excise and Prohibition Amendment Act, 2018 in which from the possession of FIR named accused person about eleven (11) liter country made Mahua wine was recovered.

(B) And, for any other necessary order/ orders, direction/directions, relief/reliefs, for which petitioner may be found entitled in the eye of law and as well as facts of the case.”

Informant is a police officer who has alleged in his written complaint that on 20.10.19, he along with other police personnel was checking the vehicle when two persons on motorcycle were found carrying a bag kept between them and on seeing the police, tried to flee away but were nabbed after chase and from the bag, 11 liters of Mahua wine kept in a jar was recovered and motorcycle and illicit Mahua wine was seized and both persons arrested for which FIR was instituted giving rise to in Birpur P.S. Case No.131 of 2019 registered under Section 30(a) of the Bihar Excise and Prohibition Amendment Act, 2018.

As seized motorcycle was used for transportation of illicit Mahua wine as such, same is liable for confiscation under Section 56 of the Excise Act and in view of Section 60 of the Excise Act, there is bar of jurisdiction in confiscation and no court has jurisdiction to make any order with regard to



properties which are liable for confiscation and as such the Special Court, Excise has rightly rejected the petition of petitioner for release of vehicle, as contained in Annexure 3 of petition.

Petitioner shall appear before the District Collector / Confiscating Officer Begusariai on 05.10.2020 and District Collector/Confiscating Officer shall initiated confiscating proceeding if not already initiated and conclude the confiscation proceeding within 90 days from the date of filing of show cause or if show cause has already been filed within 90 days from the date of receipt/production of copy of order passed by this Court failing which District Magistrate, Begusarai shall provisionally release the vehicle of petitioner after due identification of ownership of the vehicle and on production of ownership and registration with respect to vehicle in question in his name with two sureties (one local) to the extent of the value of the vehicle as indicated in the insurance document.

The petitioner while submitting the sureties shall also furnish the following affidavits/undertakings:

(I) That the petitioner shall not indulge in creating any third party right or interest in respect of the vehicle during the pendency of the confiscation proceeding and shall not



alienate the vehicle during this period.

(ii) The petitioner shall furnish an undertaking to produce the vehicle before the confiscating authority as and when required.

(iii) Prior to release of the vehicle, a Panchanama would be prepared wherein the photograph of the vehicle shall be taken and will be certified by the petitioner and same shall be kept on record so that in future if so required, it may be used as a secondary evidence. The petitioner shall furnish an undertaking not to challenge the said Panchanama.

The release shall be allowed within a period of 14 days from the date of submission of the sureties and the undertakings as stated above, which would however be subject to finalization of the confiscation proceeding.

With said observations, this writ petition is disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.09.2020
Transmission Date	NA

