

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.7229 of 2020

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Dharamvir Kumar Son of Late Naresh Prasad @ Naresh Ram, Resident of
Village-Awadhara, Police Station-Dhanarua, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Prohibition, Excise and Registration Department, Govt. of Bihar, Patna.
2. The Principal Secretary, Prohibition, Excise and Registration Department, Govt. of Bihar, Patna.
3. The District Magistrate, Saran at Chapra.
4. The Superintendent of Police, Saran at Chapra.
5. The Officer-in-Charge, Derni Police Station, Saran at Chapra.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Radha Mohan Singh, Adv.
	:	Mr. Satya Prakash, Adv.
For the Respondent/s	:	Mr. Kumar Manish SC-5

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

Date : 18-09-2020

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:-

- i. "For issuance of writ in the nature of mandamus or any other appropriate writ for commanding the respondents to release the Hero Passion Pro Motorcycle



of the petitioner bearing Registration No. BR-01CU8416, Chassis No. MBLHA10BSGHB32276, Engine No. HA10EVGHB35722 during pendency of the confiscation proceeding as the same has been seized in connection with Derni P.S. Case No. 214 of 2019 dated 24.11.2019 registered under Sections 30 & 30(a) of the Bihar Prohibition and Excise Act 2016 with tempered registration BR04AA-8641.

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.”

Informant is a police officers who has alleged in his written complaint that on 23.11.2019 while he was on night patrolling duty alongwith other police personnel, he received a confidential information that in the house of Pankaj Kumar illicit liquor has been stored and are being sold and as he reached said place, he saw two cartoons were tied on a motorcycle parked outside his house and on search of said cartoons illicit foreign liquor were recovered and thereafter said motorcycle and illicit liquor were seized for which FIR was instituted giving rise to Derni P.S. Case No. 214 of 2019 registered under Sections 30 & 30(a) of the Bihar Prohibition and Excise Act 2016.



It is submitted on behalf of counsel for the petitioner that he is owner of the motorcycle which was stolen on 24.07.2019 by thieves, for which he had instituted FIR giving rise to Kankarbagh P.S. Case No. 721 of 2019 and unknown miscreants were using his stolen motorcycle on a fake registration number and same has been seized by the police in Derni P.S. Case No. 214 of 2019 dated 24.11.2019.

As there has been recovery of illicit liquor from the motorcycle, same is liable for confiscation under Section 56 of the Excise Act, however, since the seized motorcycle was stolen by unknown miscreants for which petitioner had already instituted FIR, as such, petitioner cannot be held responsible for indulging in trade of illicit liquor by using his stolen motorcycle.

In the facts and circumstances of the case, the District Magistrate, Chapra/Confiscating officer, Chapra is directed to provisionally release the vehicle of petitioner after due identification of ownership of the vehicle which was stolen and subsequently recovered and seized by the police in excise case 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)

veena/-

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

