

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8242 of 2020

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Naga Sah @ Nago Sah @ Naga Saha S/o Ramashish Sah, R/o Technical Chowk, Naya Tola, P.s.- Kazimohammadpur, District- Muzaffarpur

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Bihar Prohibition and Excise Department, Bihar, Patna
2. The Excise Officer, Bihar Prohibition and Excise Department, Muzaffarpur
3. The District Magistrate, Muzaffarpur
4. The Superintendent of Police, District of Muzaffarpur, Bihar
5. The Officer in Charge, Kazimohammadpur Police Station, Muzaffarpur

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Raju Kumar, Advocate
For the Respondent/s : Mr. Vivek Prasad, GP 7

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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 : 06-10-2020

Heard the parties.

Petitioner has prayed for following relief:-

“To issue an appropriate order/s, direction/s including a writ preferably in nature of Mandamus commanding the respondents to release the vehicle/Apache Motorcycle bearing Regn. No. BR-06BU-7216, Chassis No. MD634CE65J2L42123, Engine NO. CE6L12940937, Mobile and Cash Rs. 33,082/- in favour of the petitioner who is owner of the said motorcycle, Mobile and cash seized in Kazimohammad PS Case NO. 116/ under Sections 30(a) and 41 of Bihar Prohibition and Excise Act, 2016, lying



in the premises of police station and subject to natural decay by furnishing sufficient security to the satisfaction of learned Spl. Judge, Excise, Muzaffarpur.

(ii) To quash the order dated 26.06.2020 passed by Special Judge (Excise), Muzaffarpur, in connection with Kazimohammadpur PS Case NO. 116/20 whereby and whereunder the learned court below has been rejected the petitioner of petitioner to release of his motorcycle, mobile and cash.”

Informant is a police officer who has alleged in his self-statement that on 21.03.2020 while he along with other police officials were checking the vehicles, he received secret information that from the side of Chandralok Chowk two persons boarded on APACHE motorcycle are coming who are carrying illicit liquor and on receiving said information when he moved towards Chandralok Chowk he saw two persons boarded on APACHE Motorcycle coming and when they were asked to stop they tried to flee away but were apprehended and on search from one person, illicit foreign liquor and from another person cash of Rs. 33,082/- and one mobile phone were recovered which were seized and for which FIR was lodged giving rise to Kazimohammadpur PS Case No. 116 of 2020 for the offences punishable under Section 30(a) and 41 of Bihar Prohibition and Excise Act, 2016.

As seized motorcycle was used for transportation of illicit liquor same is liable for confiscation under Section 56 of



the Excise Act. However, seized cash and mobile are not liable for confiscation under section 56 of the Excise Act, as such, bar of jurisdiction in confiscation under section 60 of the Excise Act is not applicable and the special court excise has jurisdiction to pass order for release of cash and mobile during pendency of trial, accordingly, the order dated 26.06.2020 passed by Special Judge (Excise) Muzaffarpur, in K.M PS. Case No. 116 of 2020 is set aside and Special Judge (Excise) Muzaffarpur, is directed to pass a fresh order for release of cash and mobile.

Confiscation proceeding being Confiscation Case No. 509 of 2020-21 has been initiated for confiscation of APACHE Motorcycle, in which petitioner has appeared and has filed his show cause, as such, the District Collector cum Confiscating Officer, shall conclude the confiscation proceeding within 90 days from the date of receipt/production of a copy of the order passed by this Court, failing which District Magistrate, Muzaffarpur, 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)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	09.10.2020
Transmission Date	NA

