

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11509 of 2019

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Jarina Khatoon, D/o Md. Kalamuddin, R/o Khanka, P.S. Amdabad, Dist.-
Katihar

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Excise Deptt. Patna, Bihar
2. The Superintendent of Police, Katihar
3. The S.H.O. Nagar Sahayak Police Station, Katihar

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjeev Kumar Singh, Adv.
For the Respondent/s : Mr. Vikash Kumar, SC-11

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
and
HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

Date : 26-02-2020

Heard learned counsels for the parties.

The present writ application has been filed for release of APE 3 Wheeler (Piaggio) vehicle bearing registration No. BR11M5559 seized in connection with Nagar Sahayak P.S. Case No.220 of 2019, registered under Section 30(c) of the Bihar Prohibition and Excise Act, 2016, as amended by Amendment Act 8 of 2018 (hereinafter referred to as 'the Act') and Sections 279 and 427 of the Indian Penal Code.

The prayer as stipulated in paragraph No.1 of the writ application reads as under :-

“That this is an application for
issuance of an appropriate writ for the order or the



direction, directing the respondents to release the vehicle (Tempo) bearing Reg. No. BR-11M-5559 in favor of the petitioner which has been seized in connection with Nagar Sahayak P.S. Case No. 220 of 2019 u/s 279, 427 of IPC and u/s – 30(c) of Bihar Prohibition and Excise Act alleging the driver of vehicle dashed the car of the informant in drinking condition, in which confiscation proceeding is pending before the learned Collector, Katihar.”

The prosecution case as per the written report of Dr. Lakshman Kumar submitted before the ASHO, Nagar Sahayak Police Station, Katihar is to the effect that on 24.03.2015 at 6.30 P.M., when the informant was coming by his car, it was dashed by an auto rickshaw, thereafter, the informant caught the driver of the auto rickshaw with the help of the local people. It is alleged that the driver of the auto rickshaw was found in drunken condition. Subsequently, he was handed over to the local police, leading to seizure of the auto rickshaw by S.I. of Police, Subodh Kumar Yadav.

It is submitted by learned counsel for the petitioner that the petitioner is the registered owner of the vehicle in question and a copy of the certificate of registration of the same has been brought on record, as Annexure-2. In fact, it is a case of drunken driving wherein only the driver of the vehicle in question has been made accused. It is further submitted that in paragraph no.15 of the writ application inadvertently it has been mentioned that 5 litres of country made liquor was recovered



from the vehicle in question. In fact, no liquor was recovered from the vehicle in question. A statement to that effect has been made in paragraph no.4 of the supplementary affidavit, 09.09.2019.

This fact has also been confirmed by learned counsel for the respondent State that there is no recovery from the vehicle in question and it is a case of drunken driving. Hence, no confiscation proceeding has been initiated.

It is further submitted that the petitioner undertakes that if the vehicle in question is released in his favour, he will neither transfer the ownership of the vehicle in question, nor he will change the shape of the same and he will produce the same before the Court concerned as and when required.

It appears that the writ application was registered on 20.05.2019 and thereafter, despite several adjournments being granted, no counter affidavit has been filed by the learned counsel for the respondent. But in view of the admitted position that it is a case of drunken driving and there is no recovery of illicit liquor from the vehicle in question, *prima facie*, the vehicle in question is not liable for confiscation under Section 56(b) of the Act, as the same has not been used for carrying liquor or intoxicant.



In the circumstances, no useful purpose will be served in allowing the vehicle to rot under open sky leading to a complete wastage of public money. Keeping the vehicle in such condition and allowing it to rot only for the purpose of producing it as material exhibit will ultimately reduce it to a junk which has been deprecated by the Supreme Court in the case of *Sunderbhai Ambalal Desai Vs. State of Gujrat* and other analogous cases (2002) 10 SCC 283 and in the case of *General Insurance Council and Ors. Vs. State of Andhara Pradesh and Ors.* reported in (2010) 6 Supreme Court Cases 768.

Accordingly, we direct that the vehicle in question bearing Registration No. BR11M5559, seized in connection with Nagar Sahayak P.S. Case No.220 of 2019, be released provisionally till the conclusion of the trial/confiscation proceeding, if any, to the satisfaction of the learned A.D.J.-cum-Special Judge (Excise), Katihar/Collector-cum-District Magistrate, Katihar, on the following conditions :-

(I) The petitioner will produce the proof of valid certificate of registration/ownership in his favour, including the insurance papers before the Court concerned.

(II) The petitioner will furnish surety bond of Rs.1,00,000/- but not in the form of bank guarantee or cash,



with two sureties of the like amount to the satisfaction of the Special Court concerned or the confiscation authority, as the case may be;

(III) The petitioner shall give an undertaking on affidavit that he will not deal with the vehicle in question or alienate or encumber the same creating any kind of adverse interest against the interest of the State during the pendency of the confiscation proceeding;

(IV) The petitioner will not use the vehicle for any illegal purpose and as and when required, he will produce the vehicle in question before the court or authority concerned.

(V) At the time of release of the vehicle in question, the concerned court or authority shall get prepared photo copy of the vehicle in question duly certified in presence of the petitioner;

(VI) Panchnama of the vehicle in question shall also be prepared and will be kept on record which may be used as secondary evidence and the petitioner will furnish an affidavit incorporating therein an undertaking not to challenge the said photo copy or panchnama so prepared in his presence at the time of release of the vehicle in question for use in course of the trial or confiscation proceeding as the case may be.



It is made clear that the present order of provisional release of the vehicle in question will not be given effect to, if the final order has been passed in the confiscation proceeding.

The entire exercise will be done by the Special Judge/concerned authority within ten days of receipt/production of a copy of this order.

It is made clear that we have not expressed any opinion with regard to the merits of the accusation or with regard to the ownership of the vehicle in question.

Accordingly, the writ application is allowed to the extent as indicated above.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

Ashwini/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

