

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13565 of 2019

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Vishal Kumar, age – 24 years, Male, S/O- Nawal Kishor Jha, R/O- Ram Nagar, Near D.S. College, P.S.- Katihar, Distt.- Katihar.

... .. Petitioner/s

Versus

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

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjeev Kumar Singh
For the Respondent/s : Mr. Kumar Manish (SC5)

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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 : 27-02-2020

Heard Mr. Sanjeev Kumar Singh, learned counsel for the petitioner and Mr. Kumar Manish, learned SC-5.

The present writ application has been filed for release of SUZUKI GIXXER motorcycle bearing Registration No. BR-11Z-2358, which has been seized in connection with Katihar Town P.S. Case No. 326 of 2019, registered for the offences punishable under Sections 25(1-b) a / 26 / 35 of the Arms Act and Section 30(a) of the Bihar Prohibition and Excise Act, 2016 as amended by the Amendment Act 8 of 2018 (hereinafter referred to as “the Act”).

The prayer, as stipulated in paragraph no. 1 of the writ petition, reads as follows:-



“That this is an application for issuance of an appropriate writ for the order or the direction, directing the respondents to release the vehicle (Motorcycle) bearing Reg. No. BR-11Z-2358 in favour of the petitioner which has been seized in connection with Katihar Nagar P.S. Case No. 326 of 2019 u/s - 30(a) of Bihar Prohibition and Excise Act 2016 and 25(1-b) 26 /35 of Arms Act, alleging the recovery of 27 live cartridge in the vehicle, in which confiscation proceeding is pending (not started) before the learned court of Collector, Katihar.

And for any other relief for which the petitioner is found to be entitled in the facts and circumstances of the case.”

The prosecution case as per the self statement of Ranjan Kumar Singh, S.H.O., Katihar Town P.S. recorded on 23.05.2019 at 3.30 A.M. is to the effect that on 23.05.2019 while conducting raid in connection with investigation of a criminal case from the room of Aman Sah 10.140 liters of Indian Made Foreign Liquor was recovered and from the bed of Aman Sah one loaded pistol, magazine and five cartridges were recovered. Apart from that two motorcycles were found parked outside the room. From the motorcycle of the petitioner 27 live cartridges have been recovered.



It is submitted by learned counsel for the petitioner that petitioner is the owner of the vehicle in question. The certificate of registration of the vehicle in question has been brought on record as Annexure -2 to the writ petition. It is further submitted that the vehicle is rotting in open sky and keeping the vehicle in such condition and allowing it to reduce into a junk would ultimately result into waste of public money which has been deprecated by the Hon'ble Supreme Court in the case of Sunderbhai Ambalal Desai Vs. State of Gujrat and other analogous cases, reported in (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 and petitioner is ready to produce the vehicle in question as and when required by the court below and there is no recovery of liquor from motorcycle in question.

Mr. Kumar Manish, learned SC- 5 submits that it is admitted position that there is no recovery of liquor from the motorcycle in question. Though, a counter affidavit has been filed on behalf of the respondent nos. 3 and 4 i.e. Superintendent of Police, Katihar and S.H.O., Katihar Town P.S., he has received instruction that no proposal for confiscation of the vehicle in question has been transmitted by the seizing or detaining authority. to the Collector, Katihar.



Considering the fact that there is no seizure of liquor from the vehicle in question and hence it is not amenable for confiscation under Section 56 of the Act and a statement has been made by learned counsel for the State that no proposal for confiscation of the vehicle in question has been transmitted, let the vehicle in question bearing Registration No. BR-11Z-2358 be released provisionally till the conclusion of the trial or till the conclusion of confiscation proceeding, if any, to the satisfaction of learned A.D.J. II cum Special Judge (Excise), 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;

(II) The petitioner will furnish surety bond of Rs. 50,000/- but not in the form of bank guarantee or cash, with two sureties of the like amount to the satisfaction of the A.D.J.- II cum-Special Judge (Excise), Katihar 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.

The entire exercise of release process will be done by the learned Court below within a period of ten days from the date 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 this case or with regard to the ownership of the vehicle in question.

Accordingly, the writ application is disposed of.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

praful/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07-03-2020
Transmission Date	NA

