

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13615 of 2019

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Balram Lal, S/o Gopalji Lal, Resident of Village-Degwar Toli, Ward No.13A, Rosera,P.S. Rosera, Dist.-Samastipur at present Neeraj Bank DEPT. B.M. Das Road, Patna, Dist.Patna

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department Govt. of Bihar,Patna
2. The Divisional Commissioner, Excise, Patna
3. The Collector-cum-District Magistrate, Begusarai
4. The Superintendent of Police, Begusarai
5. The Excise Superintendent, Begusarai
6. The Officer-in-Charge, Khodawandpur P.S. Dist.-Begusarai

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Amrendra Kumar
For the Respondent/s : Mr.Vivek Prasad (Gp7)

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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 Mr. Amrendra Kumar, learned Counsel for the petitioner and Ms. Manisha Singh, learned Assistant Counsel to Government Pleader No. 7 for the respondents.

The present writ application has been filed for release of Mahindra Pick-up van, bearing Registration No. BR01GG-1655, which has been seized in connection with Khodabandpur Police Station Case No. 40 of 2019, registered for the offence punishable under Sections 272/273 of the Indian Penal Code and Section



30(a) of the Bihar Prohibition and Excise Act, 2016, as amended by Amendment Act 8 of 2018 (hereinafter referred to as 'the Act').

The relief, as prayed for, stipulated in paragraph 1 of the writ application, reads as follow:-

“(i) For issuance of appropriate writ direction the respondents to release the Mahindra Pick Up bearing registration No. BR-01GG-1655, Engine No. TBH1G71028, Chassis No. MA12N2TBKH1G56098 in favour of the petitioner who is the actual/legal owner of the vehicle seized in connection with Khodabandpur P.S. Case No. 40/2019 dated 7.3.2016 G.R. No. 194/19 offence registered u/s 272/273 and 30 (a) Bihar Prohibition Excise Act 2016.

(ii) For restraining the respondents for disposal or auction/sale of the aforesaid vehicle seized in Khodabandpur P.S. Case No. 40/2019 G.R. No. 194/19.”

The prosecution case, as per the written report of Ajay Kumar Mishra, Assistant Sub Inspector of Police, Khodabandpur Police Station, submitted to the Station House Officer, Khodabandpur Police Station, is to the effect that on 06.03.2019, at 10:30 PM, during vehicle check, one Bolero Pick-up van, with five persons on it, was intercepted, who disclosed their names as Nitish Kumar, Manish Kumar, Ajay Jha (driver), Manish Kumar



and Raju Kumar and from the vehicle in question, 323.64 ML Indian Made Foreign Liquor was recovered, leading to the registration of Khodabandpur Police Station Case No. 40 of 2019. The apprehended persons also disclosed that they have delivered 28 cartons of Indian Made Foreign Liquor to Mani and Rakesh Paswan. The petitioner is neither named in the First Information Report nor he was present in the pick-up van at the time when liquor was seized.

It is submitted by learned Counsel for the petitioner that the petitioner is the registered owner of the vehicle in question and the certificate of registration of the seized vehicle has been brought on record by way of Annexure-1 to the writ petition. The vehicle is rotting under the open sky. It is further submitted that confiscation proceedings has not been initiated. The petitioner is ready to produce the motorcycle in question as and when required by the Court concerned and undertakes not to change the shape and nature of the motorcycle in question and also not to transfer or alienate the same.

Ms. Manisha Singh, learned Assistant Counsel to Government Pleader No. 7, relying on the counter affidavit filed on behalf of respondent nos. 4 and 6, submits that proposal for initiating confiscation proceeding has been transmitted to the



District Magistrate, Begusarai, vide letter no. 508, dated 20.07.2019, but despite her best efforts, she has not received any instruction from the District Magistrate, Begusarai, with regard to initiation of any confiscation proceeding. However, she submits that since the liquor was recovered from the vehicle in question, accordingly the same is liable to be confiscated under Section 56 (b) of the Act.

Having heard learned Counsel for the parties and on perusal of the record, it appears that the seizure has been made by the Assistant Sub-Inspector of Police, which is evident from the very opening line of the written report. Section 73(e) of the Act mandates the seizure by the police officer not below the rank of Sub-Inspector of Police. The valid seizure or detention is the *sine qua none* for initiating a confiscation proceeding under Section 56 of the Act. Hence the seizure is contrary to the provisions of the Act.

Keeping in view the fact that the First Information Report was registered on 07.03.2019, and this writ application was registered on 04.07.2019, however, despite three adjournments being granted to the respondents, there is nothing on record to show that any confiscation proceeding has been initiated till date or not. Hence, in absence of any counter affidavit on behalf of the



District Magistrate, Begusarai, it is presumed that no confiscation proceeding has been initiated.

In the circumstances in our view allowing the vehicle to turn into junk will be contrary to the ratio laid down by the Supreme Court, in the cases of **Sunderbhai Ambalal Desai Vs. State of Gujrat and other**, reported in (2002) 10 SCC 283 and **General Insurance Council and Ors. Vs. State of Andhara Pradesh and Ors.**, reported in (2010) 6 SCC 768.

More than two lakh cases have been registered in the State of Bihar under the provisions of the Act in question hence, there is no likelihood of the trial being concluded in near future. Moreover there is nothing on record to show that any confiscation proceeding has been initiated, hence, we are constrained to direct the vehicle in question being Mahindra Pick-up van, bearing Registration No. BR01GG-1655, to be released provisionally till the conclusion of the trial to the satisfaction of learned Additional Sessions Judge-II -cum- Special Judge, Excise, Begusarai and if, in the mean while, confiscation proceeding is initiated, to the satisfaction of the District Magistrate -cum- Collector, Begusarai, 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 learned Additional Sessions Judge-II -cum- Special Judge, Excise, Begusarai or the District Magistrate -cum- Collector, Begusarai, 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 will be done by the learned Additional Sessions Judge-II -cum- Special Judge, Excise, Begusarai, or the District Magistrate -cum- Collector, Begusarai, 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 this case 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.)

Prabhakar Anand/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	05-03-2020
Transmission Date	N/A

