

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13215 of 2019

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Rajesh Kumar Son of Kalathu Ram Resident of Moh- 252, Khajurbanna,
Ambedkar Colony, P.S.- Sultanganj, Anchal- Patna Sadar, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department,
Govt. of Bihar, Patna.
2. The Collector-cum-District Magistrate, District- Patna.
3. The Superintendent of Police, Patna.
4. The Station House Officer, Sultanganj Police Station, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Nagendra Kumar, Advocate Mr. Yogendra Kumar Singh, Advocate
For the Respondent/s	:	Mr. Vivek Prasad, GP-7

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
and
HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

3 19-02-2020 Heard Mr. Nagendra Kumar, learned counsel for

the petitioner and Mr. Vivek Prasad, learned GP-7 for the

respondent-State.

The present writ application has been filed for
release of Bajaj Avanger Motorcycle bearing Registration
No. BR01CS-8927, in favour of petitioner which has been
seized in Sultanganj P.S. Case No. 254 of 2018 registered for
the offence punishable under Sections 401, 379, 411, 414 of
the Indian Penal Code, Sections 25(1-B)a/26/35 of the Arms
Act and Sections 30(a)/38 of Bihar Prohibition and Excise



Act, 2016, as amended by the Amendment Act 8 of 2018 (hereinafter referred to as 'the Act').

The relief, as prayed for by the petitioner as stipulated in paragraph no.1 of the writ application reads as follows :-

“That this is an application for issuance of an appropriate writ, order or direction, directing the respondent to release the vehicle bearing Registration No. BR01CS-8927 Bajaj Avanger Motorcycle, bearing Engine No. PDZCFJ91269, Chassis No. MD2A85C27FCJ14017 in favour of the petitioner which has been illegally seized and kept in abandoned condition in connection with Sultanganj P.S. Case No. 254/18 dated 06.09.2018, registered under section 401, 379, 411, 414 IPC, 25(1-B)a/26/35 Arms Act and 30(a)/38 of the Bihar Prohibition and Excise Act, 2016. From the said motorcycle wine has not been recovered.

And for any other relief or reliefs for which may be found entitled in the facts and circumstances of the case.”

The prosecution case as per the written report of Dinesh Chandra Srivastava, Sub-Inspector -cum- Station House Officer of Sultanganj Police Station is to the effect that on 06.09.2018 on the direction of superior officer vehicle



check was conducted and three persons driving a motorcycle were intercepted and apprehended, who disclosed their name as Rohit Kumar @ Kallu, Tarjan Kumar and Golu Kumar and from the possession of Rohit Kumar @ Kallu, one country made revolver and one mobile phone were recovered, while from the possession of Tarjan Kumar and Golu Kumar, one mobile phone each were recovered. On their interrogation, house of Golu Kumar was searched, from where 3.750 litres of Indian Made Foreign Liquor, one CPU, three UPS, three mobile phones of different company and cash of Rs.10,000/- were recovered and on the interrogation of Golu Kumar the house of other persons were also searched and several articles were recovered, leading to registration of Sultanganj P.S. Case No. 254 of 2018.

It is submitted by learned counsel for the petitioner that the petitioner has not been made accused in the present case and there is no recovery of liquor from the motorcycle in question. The motorcycle has been seized only on the basis of suspicion and vehicle in question is rotting in open sky. It is further submitted that the petitioner is the registered owner of the vehicle in question and certificate of registration of the vehicle in question has been brought on



record, as Annexure-2.

Learned GP-7 appearing for the State-respondents submits that though the motorcycle in question has been seized, but admits that there is no recovery of liquor from the motorcycle in question.

Though, a counter affidavit has been filed on behalf of respondent no. 3, Superintendent of Police, Patna but it does not reflect that any proposal for initiation of confiscation proceeding has been transmitted.

Considering the rival submissions of the parties, it appears that there is no recovery from the motorcycle in question. The motorcycle in question was seized when three persons were riding the same. Section 56(b) of the Act mandates that the vehicle or vessel can only be liable for confiscation if it has been used for carrying the liquor. Section 56(b) of the Act reads as follows:-

“56(b) any intoxicant or liquor lawfully imported, transported, manufactured, sold or brought along with or in addition to, any intoxicant, liable to confiscation under clause(a).”

The material on record does not suggest that any recovery has been made from the motorcycle in question



nor the petitioner has been made accused in the present case. Hence, keeping the vehicle in such condition and allowing to reduce it into junk, would ultimately result into wastage of public money, 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. (2010) 6 Supreme Court Cases 768. We, accordingly, direct that the same be released to the satisfaction of learned Additional Sessions Judge-II -cum- Special Judge, Excise, Patna in connection with Sultanganj P.S. Case No. 254 of 2018 provisionally till the conclusion of the trial 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, Patna;

(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 trial;

(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 concerned;

(V) At the time of release of the vehicle in question, the concerned court 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 provisional release of the motorcycle in question will be done by learned Additional Sessions Judge-II -cum- Special Judge, Excise,



Patna within ten days of receipt/production of a copy of this order.

Accordingly, the writ application stands disposed of.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

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