

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12363 of 2019

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Ramesh Ram S/o Ramdev Ram vill.- Chachariyan Kakariyan Rajpur, P.s.-
Dhansoi, Distt.- Buxar

... .. Petitioner/s

Versus

1. The State of Bihar through its Principal Secretary, Bihar Excise Department at Patna
2. The Divisional Commissioner Bihar Excise Department at Patna
3. The Collector of District of Buxar at Buxar
4. The Superintendent of Police Buxar at Buxar

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Arun Kumar Gupta, Adv
For the Respondent/s : Mr.Vikash Kumar (SC11)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 25-06-2020

Heard learned counsel for the petitioner and learned
counsel for the respondents.

Petitioner has prayed for the following relief: -

“That this writ application is being filed on behalf of above named petitioner for giving direction to respondent to release Bajaj Discover Motorcycle bearing Chasis No. MD2A15BXXHRB63809, Engine No, JZYRHB13985 which was seized in connection with Dhansoi PS Case No. 54 of 2019 for offence under Section 37(2) of Bihar Prohibition and Excise Act.”

It has been submitted by learned counsel for the petitioner that no illicit liquor was recovered from the vehicle in



question.

It has been submitted by learned counsel for the State that in case of no recovery of any illicit liquor from the vehicle, the vehicle is not liable for confiscation and same has been decided by the Excise Commissioner, Bihar, Patna, in appeal of confiscation being Case No. 107 of 2019 (arising out of Tariyani P.S. Case No. 184 of 2018) titled as Ajit Rai & Ors Vs. The Collector, Sheohar. The operative part of the order reads as follows:-

“Hence, even as per the substituted Section 32 of the Amended Act, the presumption is only vis-a-vis the person, whose vehicle is liable to confiscation and such vehicle can be made liable to confiscation only when it is used, as per Section 56(d), for carrying or transporting the prohibited article under the Act. Thus, the transportation of prohibited article under the Act, 2016, is a *sine qua non* for a vehicle to be confiscated on the passing of an order by the District Collector.

From the aforesaid Judgment and Order passed by the Hon’ble High Court of Patna it is well established that the transportation of prohibited article under the Act, 2016 is a *sine qua non* for a vehicle to be confiscated on the passing of an order by the District Collector. Therefore the confiscation order passed by the learned Collector, Sheohar, in confiscation case no. 107 of 2019 on 09.12.2019 is hereby ordered to be modified to the extent that the three motorcycles bearing registration no. BR 06BJ 6591; BR 06BL 5384 and BR 55 4036 will be released after verifying the document related to registration and owners of the said vehicle as there is no recovery of liquor from these motorcycles.

Let the copy of this order be communicated to all District Magistrates, Superintendent of Police and Assistant Commissioner/Superintendent of Prohibition for information and necessary action.”



Accordingly, petitioner is directed to file an application before the Special Court (Excise), Buxar, under Section 451 of Cr.P.C for interim release of the vehicle which has been seized by the police in the case as same is not liable for confiscation and as such it is the Special Court (Excise), which can pass an order for interim release of the vehicle, with terms and conditions of release as usually imposed. If any such application is filed by the petitioner same to be disposed of within **30** days from the filing of said application.

With the aforesaid observation and direction, this writ petition is disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

ranjan/-

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

