

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13985 of 2019

=====

Guddu Pandey aged about 31 years, Sex- Male, Son of Late Chandra Shekhar Pandey, Resident of Village - Kare, Police Station - Sheikhpura, District - Sheikhpura

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Excise, Government of Bihar, Patna
2. The District Magistrate-cum-Collector, Sheikhpura
3. The Superintendent of Police, Sheikhpura, District- Sheikhpura
4. The Excise Superintendent of Police, Sheikhpura, District- Sheikhpura
5. The Deputy Superintendent of Police, Sheikhpura, District- Sheikhpura
6. The Inspector of Police, Sheikhpura, District- Sheikhpura
7. The S.H.O. Sheikhpura Police Station, District- Sheikhpura

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Bipin Kumar
For the Respondent/s : Mr. Kumar Pankaj AC to SC5

=====

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. Bipin Kumar, learned counsel for the petitioner and Mr. Kumar Pankaj, learned AC to SC 5.

The present writ application has been filed for release of TMC TVS Apache motorcycle bearing Registration No. BR52B-3619, which has been seized in connection with Excise Case No. 121 of 2019, registered for the offence punishable under 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 the petitioner of this case filed this civil writ application in the nature of mandamus to immediately release (Motorcycle) of petitioner bearing Registration No. BR52B-3619, Engine No. MD634KE64G2F48619, Chassis No. MD6F2G114961 which has been seized in connection with Excise Case No. 121 of 2019 for the offences under section 30(a) of Bihar Prohibition & Excise Act, 2016.”

The prosecution case is that on 05.04.2019 the informant Sub Inspector of Excise, Sivendra Kumar received a secret information that one Aakash Sao was to deliver liquor to the petitioner Guddu Pandey and consequently, a raid was laid and Guddu Pandey and Ravi Shankar Pandey were apprehended with the motorcycle in question and from the motorcycle 10.5 liters of Indian Made Foreign Liquor was recovered, leading to registration of the F.I.R.

It is submitted by learned counsel for the petitioner that the 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 present writ petition. The vehicle in question is rotting under the open sky and keeping the



vehicle in such condition and allowing it to reduce into a junk would ultimately result into wastage of public money and the petitioner is ready to produce the vehicle in question as and when required by the court below. However, he does not deny that confiscation proceeding has already been initiated. The petitioner is ready to produce the vehicle in question as and when directed by the concerned court and will not change the shape of the vehicle in question creating any kind of adverse interest against the interest of the State during the pendency of the confiscation proceeding.

However, learned counsel for the respondent relying upon the supplementary counter affidavit filed on behalf of the respondent no. 2 & 4 i.e. District Magistrate-cum-Collector, Sheikhpura and Superintendent of Excise, Sheikhpura submits that the confiscation proceeding was initiated on 28.10.2019 being Confiscation Case No. 246 of 2019 and notice has been issued to the petitioner, but he has not appeared till date.

The admitted position is that the confiscation proceeding has already been initiated and pending since 2019 and in view of the ratio laid down by the Full Bench of this Court in the case of Baleshwar Roy and Ors. Vs. The State of Bihar and Ors. reported in 2018(4) PLJR 970, it has been held that on initiation of confiscation proceeding this Court cannot interfere and exercise



jurisdiction under Article 226 of the Constitution of India except in monstrous conditions. Paragraph nos. 62 to 66 of the said judgment reads as follows:-

“62. It may, however, be added that Article 226 of the Constitution of India provides power to the High Court to issue writs to any person or authority, including in appropriate cases, any Government, any order or writs (including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part-III and for any other purpose). Similarly Article 227 of the Constitution of India provides the power of superintendence over all Courts and Tribunals throughout the territories in relation to which any High Court exercises its jurisdiction. The powers of the High Court under Articles 226 and 227 of the Constitution of India cannot be curtailed under any circumstance, as the power flows from the Constitution itself. No statutory bar can affect the power of the High Court under Articles 226 and 227 of the Constitution of India.

63. Despite such wide and untrammelled powers, without any circumscription by external restrictions, the



Courts have evolved certain self-imposed limits while exercising these powers. The High Courts, normally, would not go beyond justified inhibitions under any Statue except where there is a complete jettisoning of rule of law or under exceptional circumstances which demand timely judicial interdict. This inhibition is basically ordained, keeping in mind that there is a national weal behind any valid piece of Legislation incorporating and inhering in itself the social objective behind any Legislation. Though, no limitations or fetters have been put on the powers of the High Court under Articles 226 and 227 of the Constitution of India, as the High Courts perform as sentinel on the qui-vive, but such power is not to be exercised casually and without coming to the conclusion that non-exercise of such power would lead to positive injustice. Times without number, it has been held by the High Courts that only under condition of a person establishing that substantial injustice has or is likely to ensue, such extraordinary powers can be exercised. It needs no adumbration by this date that the plenary powers of the High Court have only to be exercised in the interest of justice.



64. Thus, an order of release may be passed under Article 226/227 of the Constitution of India, even pending confiscation proceedings, but only when it is established before the Court that the procedure prescribed and the law in that regard has been completely flouted and that there is complete violation of the procedure prescribed for confiscation, viz., notice to the offender before confiscation, allowing him opportunity of giving written representation and affording hearing on the issue to him and that such injustice cannot be remedied without the exercise of the extraordinary power.

65. Needless to state that under Article 226 of the Constitution of India, the Court will not go into the disputed question of facts.

66. Thus, the powers directing for release of the vehicles or goods, during the pendency of the confiscation, can only be sparingly exercised under monstrous situations and circumstances when injustice occurs because of non-fulfillment of the conditions for confiscation.”



Considering the rival submission of the parties and the above mentioned legal position, we are not inclined to direct for the release of the vehicle in question. However, it is expected from the District Magistrate -cum-Collector, Sheikhpura to conclude the proceedings of Confiscation Case No. 246 of 2019 within a period of six weeks from the date of receipt / production of a copy of this order. It is expected from the petitioner to appear regularly in the confiscation proceeding.

Accordingly, the writ petition is disposed of.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

praful/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17-03 -2020
Transmission Date	NA

