

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.13917 of 2019

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Indramani Singh S/o Late Rajkeshwar Singh R/o Jahanabad Ward No.7,PS
Kudra,Dist.Kaimur at Bhabua

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Govt. of Bihar, Patna
2. The Principal Secretary, Excise Department, Govt. of Bihar, Patna
3. The District Magistrate, Rohtas at Sasaram
4. The Superintendent of Police, Rohtas at Sasaram
5. The Officer-in-Charge, PS Nasriganj, Dist. Rohtas

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashutosh Tripathy
For the Respondent/s : Mr. Vikash Kumar (Sc11)

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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 : 28-02-2020

Heard Mr. Ashutosh Tripathy, learned counsel for the petitioner and learned A.C. to S.C.-11 for the respondents.

The present writ application has been filed for a direction to the respondent authorities to release the Scorpio vehicle bearing Registration No. BR45P0225, in favour of the petitioner, which has been seized in connection with Nasriganj P.S. Case No.157 of 2017, registered of 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 relief as prayed for in paragraph No.1 of the writ application reads as follows :-

“1. That this application is being filed for issuance of an appropriate writ/order/direction upon the respondents to release the vehicle (Scorpio bearing Registration No.BR45P-0225, Engine No.B264J59379, Chasis No.MAIT B2 BSI62J 89360 in favour of the petitioner who is the owner of the vehicle which was seized by the police on 28.07.2017 in connection with Nasriganj P.S. Case No.157 of 2017 under the provisions of Bihar Prohibition of Excise Act, 2016.

1/A :- That te petitioner further prays for issuance of any other appropriate writ/order/for quashing the order dated 08.05.2019 passed by learned Addl. District & Sessions Judge-II-cum-Special Court (Judge) Excise, Rohtas at Sasaram in Nasriganj P.S. Case No.157 of 2017 only on the ground that law is not permitted.

1/B :- That the petitioner further prays for issuance of any other appropriate writ/ order/ direction to which he is found entitled to.”

The prosecution case got initiated on the basis of written report of Manoj Kumar, Assistant Sub Inspector of Police, Nasriganj P.S. submitted to S.H.O., Nasriganj P.S. is to the effect that on 28.07.2017 at 06:30 P.M., during patrolling, a secret information was received that from the Scorpio vehicle, illicit liquor is being transported, whereupon the vehicle in question has been intercepted and and 306 litres of illicit liquor were recovered and the vehicle was seized, leading to registration of Nasriganj P.S. Case No.157 of 2017.



It is submitted by learned counsel for the petitioner that the petitioner is not named in the F.I.R. It is submitted by learned counsel for the petitioner that the petitioner is registered owner of the vehicle in question and certificate of registration has been brought on record, as Annexure-2 and the vehicle in question is rotting under open sky. Learned counsel for the petitioner further submits that the confiscation proceeding has not been initiated till date, however, no statement to that effect has been made in the petition.

Learned counsel for the respondent-State submits that in spite of his best efforts, no instruction has been received from District Magistrate, Rohtas at Sasaram. Hence, it cannot be said that the confiscation proceeding has been initiated

Having heard learned counsel for the parties, it appears that F.I.R. was registered on 28.07.2017, the writ application was filed on 09.07.2019 obviously, after serving the copy of the writ application upon the learned counsel for the State and thereafter, the matter was heard and adjourned on the request of the learned counsel for the respondent-State vide order dated 27.09.2019 for 06.12.2019, the matter was thereafter adjourned with consent of both the learned counsels for the parties and on 06.12.2019, by



way of last chance, matter was listed on 13.01.2020 for filing detailed counter affidavit with regard to the stage of the confiscation proceeding but till date, no instruction has been received. Learned counsel for the respondent showing his inability that in spite of his best efforts, District Magistrate, Rohtas at Sasaram has not transmitted any instruction through affidavit. This shows the callous manner in which the quasi-judicial function is being conducted. In such circumstances, we are constrained to direct for provisional release since there is nothing on record to suggest that confiscation proceeding has been initiated.

In the facts and circumstances of the present case, no useful purpose will be served in allowing the vehicle to rot under open sky. Moreover, 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 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.**

Accordingly, we direct the release of Scorpio bearing Registration No.BR-45P0225 provisionally till the conclusion of



the trial or conclusion of confiscation proceeding to the satisfaction of ADJ-II-cum-Special Judge, Rohtas at Sasaram 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.2,00,000/- but not in the form of bank guarantee or cash, with two sureties of the like amount to the satisfaction of the Special Court concerned 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.

It is expected from the learned Court below to complete the whole exercise of release the vehicle in question 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 the accusation or the ownership of the vehicle.

Accordingly, the writ application is disposed of with the terms indicated above.

Let a copy of this order be transmitted to the District Magistrate, Rohtas at Sasaram through fax/email.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

sanjeev/-

AFR/NAFR	NAFR
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CAV DATE	NA
Uploading Date	07.03.2020
Transmission Date	NAFR

