

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17852 of 2019

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Upendra Thakur Son of Rajvanshi Thakur, resident of Village- Gurwaliya
Babu Tola, ward no.-6, P.S.- manua pul Dist.- West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Excise Department,
Bihar, Patna.
2. The District Magistrate, West Champaran at Bettiah.
3. The Superintendent of Police, West Champaran at Bettiah.
4. The S.H.O. Excise Chanptia.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Atal Bihari
For the Respondent/s : Mr.Vivek Prasad (Gp7)

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 30-06-2020

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

Petitioner has prayed for the following relief:-

“That this application is being filed for release of
vehicle Pulsur Motorcycle registered **No. BR22AK2949**
and Chechis No. MDZA11CY7518840 Engine No.
DHYRJJ89393 which belongs to the petitioner and has
been seized in connection with Chanpatia P.S Case No.
186/2019 dated 08.06.2019 registered for the offence u/s
30(a) of Bihar Prohibition and Excise Amendment Act,
2016.”

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), West Champaran, 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 bar of jurisdiction in confiscation under Section 60 of the Excise Act, 2016 will not be applicable 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

