

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.18297 of 2019**

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Ravinesh Kumar @ Ravinesh Kr., S/o Uday Shankar Singh @ Uday Shankar Sharma, age about 29 years, Male, R/o Village- Mahathi, Ward No.- 06, P.S.- Vibhutipur, District- Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Registration, Excise & Prohibition Department, Government of Bihar, Patna.
2. The Principal Secretary, Registration, Excise & Prohibition Department, Government of Bihar, Patna.
3. The Collector, District- Araria.
4. The Superintendent of Police, Araria.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Kundan Kumar Singh  
For the Respondent/s : Mrs. Manisha Singh, AC to GP – 7

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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 : 06-01-2020**

Heard Mr. Kundan Kumar Singh, learned counsel for the petitioner and Mrs. Manisha Singh, learned A.C. to Government Pleader No. 7.

The present writ application has been filed for release of Maruti Alto 800 Car bearing Registration No. BR01DE3374 seized in connection with Excise Spl. Case No. 1031 of 2018 (arising out of Excise Case No. 38 of 2018), registered for the offences punishable under Sections 30(a) & 32(3) of the Bihar



Prohibition and Excise Act, 2016, read with Amendment Act 8 of 2018 (hereinafter referred to as 'the Act').

The factual matrix of the case is that the vehicle in question was intercepted and 92.250 liters of Indian made foreign liquor was recovered from the same leading to registration of Excise Spl. Case No. 1031 of 2018 (arising out of Excise Case No. 38 of 2018).

It is submitted by learned counsel for the petitioner that the petitioner is the *bona fide* registered owner of the vehicle in question. The certificate of registration of the vehicle in question has been brought on record as Annexure -3 to the present writ petition. A statement has been made in paragraph no. 10 of the writ petition that the confiscation proceeding has been initiated and this fact has not been controverted by learned counsel appearing for the respondents. However, no number of the confiscation case has been brought on record.

It is submitted by learned counsel for the respondents that since confiscation proceeding has been initiated, the vehicle in question no longer belongs to the petitioner and therefore, it would not be desirable to issue any direction for the release of the vehicle in question.



In view of the submissions made by learned counsel for the parties and the admitted fact that the confiscation proceeding has been initiated, we are not inclined to interfere in the matter. Even if the vehicle is not liable for confiscation then the Special Judge under the Act in view of the bar under Section 60 of the Act, has no jurisdiction to direct for the release of the vehicle. However, such a bar will not operate in exercise of jurisdiction under Article 226 of the Constitution of India but such power has to be exercised in an exceptional or monstrous situation. Considering the view taken by the Apex Court in the case of State of Karnataka Vs. K. Krishnan reported in (2000) 7 Supreme Court Cases 80 and in the case of State of West Bengal and Ors. Vs. Sujit Kumar Rana, (2004) 4 Supreme Court Cases 129, a Full Bench of this Court in the case of Baleshwar Roy Vs. The State of Bihar and Ors., 2018(4) PLJR 970, held 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 Statute 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.”*

However, in view of the fact that the prosecution case got initiated on 02.09.2018, it is expected from the District Magistrate-cum-Collector, Araria i.e. respondent no. 3 to conclude the confiscation proceeding in Excise Spl. Case No. 1031 of 2018 (arising out of Excise Case No. 38 of 2018) within a period of eight weeks from the date of receipt /production of a copy of this order.

Accordingly, the writ petition stands disposed of.

**(Dinesh Kumar Singh, J)**

**( Anil Kumar Sinha, J)**

praful/-

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