

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17981 of 2019

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Chhotku Yadav, S/o Vishnu Yadav, R/o Jaganpura New Jaganpura, P.S.-Ram Krishna Nagar, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary Department of Excise Bihar, Patna.
2. District Magistrate-cum-Collector, Patna.
3. Superintendent of Police Patna.
4. The Station Police Officer Ram Krishna Nagar, District Patna
5. Investigating Officer Ram Krishna Nagar Police Station Case no. 457/19

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shailesh Kumar, Adv.
For the Respondent/s : Mr. Vikash Kumar, SC-11

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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 : 21-01-2020

Heard Mr. Shailesh Kumar, learned counsel for the petitioner and learned AC to S.C. - 11 for the respondents.

The present writ application has been preferred for release of Maruti 800 Car of the petitioner bearing Registration No. BR1K1223 which has been seized in connection with Ram Krishna Nagar P.S. Case No. 457 of 2019 (Special Case No.6520 of 2019), registered for the offence under Section 30(a) of the Bihar Prohibition and Excise Act, 2016, as amended by Amendment Act 8 of 2018, (hereinafter referred to as 'the Act').



The prosecution case, as per the written report of Vijay Kumar, being the A.S.I., submitted to S.H.O., Ram Krishna Nagar Police Station is to the effect that on 26.03.2019 at 10.00 P.M., during the course of patrolling, the vehicle in question was intercepted and from the vehicle of the petitioner, 1.620 litres of Indian Made Foreign Liquor was recovered, leading to registration of Ram Krishna Nagar P.S. Case No. 457 of 2019 (Special Case No.6520 of 2019).

It is submitted by learned counsel for the petitioner that the present case was registered on 23.06.2019, but the FIR reached the Court of learned Special Judge Excise, Patna on 24.07.2019, which suggests antedating of the FIR. Moreover, the petitioner is the registered owner of the vehicle in question and certificate of registration has been brought on record as Annexure-2. It is further submitted that the vehicle in question is rotting under the open sky and till date confiscation proceeding has not been initiated.

A counter affidavit, dated 21.01.2020, has been filed on behalf of respondent No.2 duly sworn by Assistant Commissioner, Excise, Patna stipulating therein that till date the District Magistrate, Patna has not received any proposal for confiscating the vehicle in question. A statement to that effect



has been made in paragraph No.7 of the counter affidavit which reads as under :-

“7. That it is humbly submitted that the court of the District Magistrate, Patna has so far not received confiscation proposal in the aforesaid matter.”

Having heard learned counsels for the parties and considering their rival submissions, we are of the considered view that the FIR was lodged and seizure has been made by A.S.I. of Police whereas Section 73(e) of the Act stipulates that the seizure cannot be made by an officer below the rank of Sub Inspector of Police. Hence, the very seizure appears to be dehors the provisions of the Act. Section 73(e) of the Act reads as under :-

“73. Power to enter, inspect, search and seize.—Any of the following officers namely:

(e) Any police officer not below the rank of Sub Inspector; or”

Section 58 (1) of the Act mandates that anything which is liable for confiscation under the Act, the officer seizing and detaining such property shall without any reasonable delay submit a report to the District Collector who has jurisdiction over the said area.



In the facts and circumstances of the present case, no useful purpose will be served in allowing the vehicle to rot under open sky leading to a complete waste of public money. Keeping the vehicle in such condition and allowing to reduce it into a junk, would ultimately result into waste of public money 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.

Moreover, learned counsel for the respondents has no objection to the provisional release of the vehicle in question, we direct that the same be released provisionally till the conclusion of the trial or till the conclusion of confiscation proceeding, if any, on the following conditions to the satisfaction of learned Additional District and Sessions Judge-cum-Special Judge (Excise), Patna:

(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.



1,00,000/- but not in the form of bank guarantee or cash, with two sureties of the like amount to the satisfaction of the A.D.J.-cum-Special Judge, Excise, Patna 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.

The entire exercise will be done by the learned Court below within ten days of receipt/production of a copy of this order, in accordance with law.

It is made clear that we have not expressed any opinion with regard to the merits of this case or with regard to the ownership of the vehicle in question.

Accordingly, the writ application is allowed to the extent as indicated above.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

Ashwini/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28.01.2020
Transmission Date	NA

