

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17305 of 2019

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Mithun Kumar @ Mithun Son of Raj Kumar Singh @ Raj Kumar Mahto
Resident of Near Mahanth Hanuman Sharan College, Purvi Mainpura, P.O.
G.P.O., P.S. Patliputra, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
2. The Principal Secretary Registration, Excise and Prohibition Department, Government of Bihar, Patna.
3. The District Magistrate-Cum-Collector Patna, District- Patna.
4. The Superintendent of Excise Patna, District- Patna.
5. The Senior Superintendent of Police Patna.
6. The Officer In-charge Patliputra Police Station, District- Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ghanshyam Sharma, Adv
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 : 29-06-2020

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

Petitioner has prayed for the following relief:-

“For issuance of nature of Mandamus commanding the respondents to release the Honda Shine Motorcycle bearing Registration No. BR01DG7668 Chassis No. ME4JC735EHT041455, Engine No. JC73ET11000063 of the petitioner, which has been seized in connection with Patliputra PS. Case No. 613 of 2018 dated 27.12.2018 registered under Section 25(1-b)a, 26/35 of Arms Act and 37(B)(C) of Bihar Prohibition and Excise Act, 2018.”



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.”

However, petitioner has also been booked in Arms Act



also and as such, order of interim release of seized vehicle can be passed by the Court where the trial is pending as such, the writ petition is disposed of with a direction to the petitioner to file an application under Section 451 of Cr.P.C for interim release of seized vehicle during pendency of criminal case and the Court below shall consider and pass order on such petition within 30 days from filing of such petition. Since, the vehicle is not liable for confiscation under Excise Act, as such bar of jurisdiction in confiscation under Section 60 of the Excise Act, will not be applicable and it will be the trial court which would exercise its jurisdiction and discretion as well as terms and conditions for interim release of the vehicle during pendency of trial.

With the aforesaid liberty and direction, the writ petition is disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

ranjan/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	01.07.2020
Transmission Date	NA

