

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18046 of 2019

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Irfan Alam Son of Mosaheb Miyan resident of Village- Jalaldi Tola, P.S.
Uchakagaon, District- Gopalganj.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department, Government of Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Excise Commissioner, Bihar, Patna.
4. The Inspector General of Police, Bihar, Patna.
5. The District Magistrate/ Collector, Gopalganj.
6. The Superintendent of Police, Gopalganj.
7. That Excise Superintendent of Police, Gopalganj.
8. The Officer-in- Charge of Uchakagaon Police Station, District- Gopalganj.
9. The Investigating Officer of Uchakagaon P.S. Case No. 103/19 dated 22.4.2019, Uchakagaon Police Station, Gopalganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Javed Aslam
		Ms. Devika Rani
For the Respondent/s	:	Mr.Vivek Prasad (Gp7)

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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 : 23-01-2020

Heard Ms. Devika Rani, learned counsel for the petitioner and Mr. Vivek Prasad, learned G.P.-7 for the respondents.

The present writ application has been filed for release of Hero Plus motorcycle bearing Registration No.BR28S-7867 in favour of the petitioner, which has been seized in connection with Uchakagaon P.S. Case No.103 of 2019 registered of the offences



punishable under Section 341, 323, 356, 379/34 of the Indian Penal Code, 1860 and 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. (a) To release the Hero Plus motorcycle bearing registration no.BR28S-7867, Chasis no. MBLHAR083HHM13604, Engine No.HA10AGHHMA9727 in favour of the petitioner which was seized in connection with Uchakagaon P.S. Case No.103 of 2019 dated 22.04.2019 registered for the offence under Sections 341, 323, 356, 379/34 of the Indian Penal Code and 30(a) of Bihar Prohibition and Excise (Amendment) Act, 2018, awaiting confiscation.

(b) To any other relief / reliefs for which the petitioner found entitled to."

The prosecution case as per the written report of one Shambhu Singh submitted to S.H.O., Uchakagoan P.S. is to the effect that on 22.04.2019, the informant was going to his village home, but on the way, two persons came on a motorcycle and snatched mobile phone of the informant. On protest being made, one accused assaulted the informant with iron kada and tried to flee away from the scene. But the informant somehow caught the pillion riders, when one accused person succeeded to flee away from the scene. The apprehended accused disclosed their name as



Kayum Alam and Aashique @ Bhagelu. From the motorcycle in question 200 ml Country Made liquor were recovered.

It is submitted by learned counsel for the petitioner that the alleged seizure of liquor has not been made by any of the authorities, as envisaged under Section 73 of the Act. The petitioner is owner of the vehicle in question and admittedly, the petitioner was not present on the place of occurrence.

A counter affidavit has been filed on behalf of respondent, but it does not depict as who transmitted the report and made recommendation for initiation of confiscation proceeding. Moreover, the counter affidavit also does not depict the fact that who was the seizing or the detaining authority.

Mr. Vivek Prasad, learned counsel for the respondents submits that confiscation proceeding with regard to the vehicle in question has been initiated, being Confiscation Case No.253 of 2019. A statement made in para 9 of the counter affidavit, which reads as follows :-

“9. That in due course of time requisition for confiscation of the vehicle in question was sent and based whereupon Confiscation Case No.253/2019 was instituted by the Confiscating Officer which is pending adjudication and therefore, the petitioner has got the remedy to approach the Confiscating Officer and satisfy him about his stand and pray for release of his vehicle.”



Section 58(1) of the Act mandates that anything 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, having jurisdiction over the said area. But in the present case, the counter affidavit does not suggest that who made the recommendation and submitted report under Section 58(1) of the Act. But the material on record suggests that the seizure has not been made by the appropriate authorities, as stipulated under Section 73 (e) of the Act. Obviously, the seizure claimed to have been made by a private person, subsequently, who handed over the seized vehicle to the police. Hence, it can neither be inferred that the recovery of liquor was made from the vehicle in question nor the vehicle was being used for carrying the liquor, making it liable for confiscation under Section 56(b) of the Act. In such circumstances, the whole confiscation proceeding appears to be only empty formality. However, usually we do not direct for release of the vehicle after commencement of confiscation proceeding but in the present case, neither the seizure has been made by the competent authority nor it appears that the report under Section 58(1) of the Act has been submitted by the seizing or detaining authority.



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 to reduce it 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*.

Considering the fact that it is admitted position that the confiscation proceeding has been initiated vide Confiscation Case No.253 of 2019 and learned counsel for the respondents has conceded for the provisional release of the vehicle in question, we direct that the same be released provisionally till the conclusion of the trial or conclusion of confiscation proceeding to the satisfaction of District Magistrate-cum-Collector, Gopalganj 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.50,000/- 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 District Magistrate, Gopalganj 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 this case and observation is only for nature of accusation regarding release of the vehicle.

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

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

sanjeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.02.2020
Transmission Date	NA

