

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.18025 of 2019**

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Manji Kumar, Son of Kamal Prasad, Resident of Village- Nauranga, Police Station- Islampur, Distt. Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Bihar Prohibition and Excise Department, Bihar, Patna.
2. The Principal Secretary, Bihar Prohibition and Excise Department, Bihar, Patna.
3. The District Magistrate, Jehanabad, District- Jehanabad.
4. The Superintendent of Police, Jehanabad, District- Jehanabad.
5. The Thana In-Charge, Ghoshi, P.S. Ghosi, Distt. Jehanabad.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr.Rabindra Prasad Singh  
For the Respondent/s : Mr.Vivek Prasad ( 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 : 23-01-2020**

Heard learned counsels for the parties.

The present writ application has been preferred for release of Hero Honda Passion Pro motorcycle of the petitioner bearing Registration No. BR21F 8192, which has been seized in connection with Ghoshi P.S. Case No. 455 of 2018, 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 prayer as is contained in paragraph no.1



of the writ application, reads as follows:-

“That, this writ petition is being filed on behalf of the petitioner for issuance of an appropriate order/orders/direction/directions/writ in the nature of Mandamus directing and commanding to the Respondents to release one Hero Honda Passion Pro Motorcycle bearing registration No. BR 21F 8192, Chassis No. M.B.L.H.A 10A WC G 69475 Engine No. H.A.10E.N.C.G.G.0442 of the petitioner which was seized by the police in connection with Ghosi PS Case No455 of 2018 dated 14.11.2018 offence under-sections 30(A) of Bihar Prohibition and Excise Act.”

The prosecution case got initiated on the written report of Mithilesh Ram, A.S.I. of Police, Ghoshi Police Station dated 14.11.2018 submitted to S.H.O., Ghoshi Police Station is to the effect that on the same day during the course of patrolling, a secret information was received that the Country Made Liquor is being transported through motorcycle and consequently, the motorcycle in question was intercepted and 20 litres of Mahua Liquor were recovered. The persons apprehended with the motorcycle was Subodh Kumar who did not give any cogent explanation for the recovery of Mahua Liquor.



It is submitted by learned counsel for the petitioner that the petitioner is the registered owner of the vehicle in question and certificate of registration has been brought on record as Annexure-1. It is further submitted that at the time of seizure, the petitioner was not present on the spot. It is further submitted that the vehicle in question is rotting under the open sky and the petitioner is ready to produce the vehicle in question as and when required by the authorities concerned.

Mr. Vivek Prasad, learned G.P.-7 made submission on the basis of counter affidavit filed on behalf of respondent no. 4, the Superintendent of Police, Jehanabad wherein letter of respondent no. 4 dated 2.1.2020 has been brought on record as Annexure B to the counter affidavit which suggests that the proposal/report for initiation of confiscation proceeding has been transmitted to the District Magistrate, Jehanabad. It is further submitted that consequently Confiscation Case No. 1 of 2020 has been initiated in the matter on 20.1.2020.

Having heard learned counsels for the parties, we find that despite the Act being the most stringent Act of the State, the procedural safeguards are not being



followed at all. The vehicle in question has been seized by the ASI of Police Mithilesh Ram whereas Section 73(e) of the Act clearly mandates that the seizure cannot be made by a police officer below the rank of Sub-Inspector of Police. Section 73(e) reads as follows:

“73. Power to enter, inspect, search and seize.—

(1) Any of the following officers namely:

- (a) The Excise Commissioner; or
- (b) The Collector; or
- (c) Any block level officer and above of the District authorized by the Collector; or
- (d) Any Excise Officer; or
- (e) Any police officer not below the rank of Sub Inspector; or....”

Hence, prima facie, the seizure has not been made in accordance with the provisions of the Act.

The counter affidavit suggests that the recommendation and the report has been made by the SHO, Ghoshi Police Station, S.D.P.O. as well as S.P., Jehanabad as gets reflected from Annexure B to the counter affidavit.

Section 58(1) of the Act mandates that the report has to be transmitted if anything is liable to be confiscated under Section 56 of the Act by seizing or detaining authority without unreasonable delay. Hence, no



recommendation has been made by the seizing or detaining authority. The FIR was registered on 14.11.2018 and the seizure was made on the same day whereas recommendation by the officer-in-charge was made on 31.12.2019 and ultimate recommendation was transmitted to the Collector on 2.1.2020. The materials on record does not suggest any such explanation for such unreasonable delay. Hence, the report/recommendation is not as prescribed under Section 58(1) of the Act. However, the order of the Collector initiating confiscation proceeding has not been brought on record but it appears that all these lapses discussed above have not been considered by the Collector, Jehanabad while initiating the confiscation proceeding.

Section 58(2) of the Act mandates the Collector to reach to a certain level of satisfaction on the basis of the report received under Section 58(1) of the Act that the offence under the Act has been committed. The receipt of report does not mean that any report, it means a report as prescribed under Section 58(1) of the Act. The report which has been transmitted to the Collector as contained in Annexure B to the counter affidavit, cannot be treated to be a report under Section 58(1) of the Act.



Usually, when the confiscation proceeding is initiated, we do not direct for release of the vehicle but in the present case, we find that right from seizure up to recommendation for initiation of confiscation, there is absolutely no strict compliance of the provisions of law. Hence, we direct that the vehicle in question be released provisionally till the conclusion of the trial to the satisfaction of learned Additional District and Sessions Judge-cum-Special Judge (Excise), Jehanabad 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 A.D.J.-cum-Special Judge, Excise, Jehanabad 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 Collector, Jehanabad to proceed in the confiscation proceeding keeping in view the flagrant violation of the provisions under the Act with regard to seizure and recommendation for confiscation. The entire exercise will be done by the learned Court below



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 or with regard to the ownership of the vehicle in question.

Accordingly, the writ application stands disposed of.

**(Dinesh Kumar Singh, J)**

**( Anil Kumar Sinha, J)**

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