

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18227 of 2019

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Vijay Yadav, S/o Ramdhani Yadav, Resident of Nanhubigha, P.S.- Akbarpur,
Distt.- Nawada

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Bihar, Prohibition and Excise Department, Bihar, Patna
2. The Excise Commissioner Bihar, Prohibition and Excise Department, Bihar, Patna
3. The Excise Officer Bihar, Prohibition and Excise Department, Nawada
4. The District Magistrate Nawada
5. The Superintendent of Police Nawada
6. The Officer In Charge of Govt. Official Nawada, Distt.- Nawada

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Pramod Kumar Verma, Adv.
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 : 06-01-2020

Heard Mr. Pramod Kumar Verma, learned counsel
for the petitioner and learned AC to GP-7 for the respondent-
State.

The present writ application has been filed for release
of Hero Glamour motorcycle bearing Registration No. BR 27K
2880, in favour of petitioner which has been seized in G.O. Case
No.139 of 2019 registered for the offences punishable under
Sections 30(a) and 56(d) of 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 by the petitioner as stipulated in paragraph no.1 of the writ application reads as follows :-

“That in the instant writ application the petitioner seeks the following relief/reliefs :-

I) To issuance of an appropriate order/orders, direction/directions including a writ preferably in nature of Mandamus, directing and commanding the respondents authorities to release the vehicle/Motorcycle bearing Registration No. BR-27K-2880 Chassis No. MBLJAR025JGA67535 Engine No. JAO6ERJGA 78269 in favour of the petitioner, who is owner of the said Vehicle/Motorcycle which was seized in G.O. Case No.139 of 2019 Registered for offence punishable under Section 30Aa), 56(D) of the Bihar Excise and Prohibition Act, 2016 and kept for confiscation before Respondent No.4.

II) For issuance of appropriate writ/order/direction commanding the respondents to release the vehicle/Motorcycle of the petitioner during the pendency of the confiscation proceeding a reasonable surety till the disposal of the said confiscation proceeding.

III) For issuance of appropriate writ/order/direction on commanding the respondent to make proper arrangement for the safe custody of the said motorcycle which is kept in open sky in police station premises.

IV) Any other relief/reliefs to which the petitioner is entitled in the facts and circumstances of the case.”



The prosecution case is that the vehicle in question was intercepted and from the alleged vehicle, 2 litres of country made liquor were recovered.

It is submitted by learned counsel for the petitioner that the petitioner claims to be the registered owner of the vehicle in question. The copy of the registration certificate of the vehicle in question has been brought on record as Annexure-2.

It is submitted by learned AC to GP-7 that confiscation proceeding with regard to the vehicle in question has already been initiated vide Confiscation Case No.487(M) of 2019 and the same is pending before the District Magistrate, Nawada. A statement to that effect has been made in paragraph no.2 of the counter affidavit dated 16.12.2019 filed on behalf of the respondent Nos. 3 and 4. However, it is further submitted that proceeding of the said confiscation case will be concluded within a time frame.

Considering the fact that once the confiscation proceeding is initiated, the exercise of discretionary jurisdiction under Article 226 of the Constitution of India, having self imposed restrictions can be exercised in exceptional or a monstrous situation. Such as when fundamental rights have



been violated, the impugned order or the proceedings are wholly without jurisdiction or where the principle of natural justice has been violated or vires of the Act is under challenge. 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** reported in (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.** reported in 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.”

Since the vehicle in question was seized on 11.07.2019, it is expected from the District Magistrate, Nawada to conclude the proceeding of the Confiscation Case No.487M of 2019 and dispose of the same by a reasoned and speaking order within a period of eight weeks from the date of receipt/production of a copy of this order in accordance with law.

The petitioner is also expected to appear regularly and participate in the confiscation proceeding.

Accordingly, with the above observation and direction, the present writ application is disposed of.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

Ashwini/-

AFR/NAFR	NAFR
CAV DATE	NIL
Uploading Date	08.01.2020
Transmission Date	NIL

