

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20738 of 2019

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Rajesh Kumar, S/o Mahendra Prasad, R/o House No.- 185, Saidpur, Nahar Road, Nand Nagar Colony, Rajendra Nagar, P.S.- Kadamkuan, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar Through Principal Secretary, Home Department Government of Bihar, Old Secretariat, Patna 800001.
2. The Secretary, Excise Department, Vikash Bhawan, Bailey Road, Patna, Bihar- 800001.
3. The District Magistrate, Patna, Collectorate Office, Gandhi Maidan, P.S.- Gandhi Maidan, Patna.
4. The Officer-in-Charge of Kotwali Police Station, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Deovind Kumar Singh
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 : 02-07-2020

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

Petitioner has prayed for the following relief:-

“That this Civil Writ application is for issuance of
appropriate writ/orders/directions commanding the
respondents to release the Pulsar 150 DISC ABS Motorcycle,
bearing its Registration No. BR01EJ7698, Chasis No.
MD2A11CY9KRA34054, Engine No. DHYRKA59100,
which was seized by Officer-in-Charge of Kotwali Police
Station on 07.08.2019, in connection with Kotwali P.S. Case



No. 705/2019, Spl. Case No. 7050/19 and it is being kept in the premises of Kotwali Police Station, District- Patna.”

FIR was instituted under section 279 of the Indian Penal Code and Section 37(b) & (c) of the Bihar Prohibition and Excise Act, 2016, against the Brother-in-Law of the petitioner namely Gaurav Kumar who was driving the motorcycle in a drunken condition bearing Registration No. BR01EJ7698, giving rise to Kotwali PS Case No. 705 of 2019.

Petitioner claims to be the owner of the motorcycle and there is no allegation of recovery of any illicit liquor from the motorcycle as such, the motorcycle is not liable for confiscation,

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).

As the seized vehicle is not liable for confiscation, bar of jurisdiction in confiscation under Section 60 of the Excise Act is not applicable and the Special Court (Excise) can exercise jurisdiction under Section 451 of Cr.P.C for release of the



vehicle during pendency of criminal trial.

It has been submitted on behalf of petitioner that no confiscation proceeding has been initiated. However, even if, any confiscation proceeding has been initiated, same is to be dropped by the confiscating officer, in view of decision of appellate authority as referred above.

The writ petition is disposed of with liberty to petitioner to file a petition under Section 451 of Cr.P.C for release of vehicle before the concerned Special Court (Excise), where the trial of Special Case being Spl. Case No. 7050 of 2019 arising out of Kotwali PS case No. 705 of 2019 is pending and the Special Court is directed to dispose of such petition within 30 days from the date of filing.

(Sanjay Karol, CJ)

(S. Kumar, J)

ranjan/-

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

