

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.24276 of 2019

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Amit Kumar, S/o Mohan Lal Prasad, R/o Islamram Chowk, P.S.-Bettiah,
District-West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department, State of Bihar, Patna.
2. The District Magistrate, Bettiah, West Champaran.
3. The Superintendent of Police, Bettiah, West Champaran.
4. The Officer In-charge of Bettiah Town Police Station, in the District of West Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Ms. Kanchan Kumari, Adv.
For the Respondent/s : Mr. Vivek Prasad, G.P.-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 Ms. Kanchan Kumari, learned counsel for
the petitioner and Mr. Vivek Prasad, learned G.P.-7 for the State.

A supplementary affidavit has been filed on behalf



of the petitioner for deleting the statement made in paragraph no.6 of the writ petition since it is not related with the present case. Let the statement made in paragraph No.6 of the writ petition be ignored.

The present writ application has been filed for release of Honda Shine Motorcycle bearing Registration No. BR-22AA-7679 in favour of the petitioner which has been seized in connection with Bettiah Town P.S. Case No. 496 of 2018, registered for the offence punishable 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 stipulated in paragraph no.1 of the writ application, reads as follows:-

“1 That through this instant writ application the present petitioner bet the kind indulgence of this Hon'ble Court for the following reliefs :

a- For issuance of appropriate writ commanding and directing the respondents authorities to release the Honda Motorcycle 'Sine' bearing registration No. BR22AA7679, Chassis No.ME4JC735DHT020513 and Engine No. JC73ET1049889 seized by the respondent police of Nagar Bettiah Police Station in a case bearing Nagar Bettiah Police Station case No. 496 of 2018 registered for the offences U/s 30(a)



of the Bihar Prohibition and Excise Act, 2016, in favour of the petitioner and handing it over to him or to his representatives, since the case is pending in the Court of learned Special Judge, Excise, Bettiah, West Champaran and the petitioner's vehicle is lying in the police station premises.

b- For the issuance of any other relief/reliefs in favour of the petitioner, to which the petitioner may be found entitled, to in the facts and circumstances of the present case.”

The prosecution case got initiated on the basis of written report of Md. Jafruddin, A.S.I. of police submitted to the S.H.O., Bettiah Town Police Station is to the effect that on 10.06.2018 about 3.00 A.M., in the night, during raid, the motorcycle in question was intercepted and 75 bottles of Indian Made Foreign Liquor of 180 ml each, total 8.640 ml were recovered, leading to registration of Bettiah Town P.S. Case No. 496 of 2018.

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-2. It is further submitted that the vehicle in question is rotting under the open sky and till date confiscation proceeding has not been initiated.



Mr. Vivek Prasad, learned G.P.-7 submits that though proposal for initiating confiscation proceeding was transmitted to the District Magistrate, but it has been returned due to lack of transmitting report de horse the prescribed procedure. Thereafter, neither any fresh proposal/report for initiating confiscation proceeding has been transmitted nor the confiscation proceeding has been initiated. However, in pursuance to the order dated 12.12.2019, no counter affidavit could be filed.

Considering the fact that since neither there is any valid report for initiating fresh confiscation proceeding under Section 58(1) of the Act nor confiscation proceeding has been initiated, no useful purpose will be served allowing the vehicle to reduce to junk only for the purpose of producing the same as material exhibit during trial. Since more than two lacks cases have been registered under the Act in question, hence, there is no likelihood of concluding the trial in near future.

Keeping the vehicle in such condition and allowing it to reduce into 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 (2002) 10 SCC 283 and in the case of



General Insurance Council and Ors. Vs. State of Andhara Pradesh and Ors. (2010) 6 Supreme Court Cases 768.

Accordingly, we direct that the vehicle in question be provisionally released till the conclusion of the trial or conclusion of the confiscation proceeding, if any, on the following conditions to the satisfaction of learned Additional District and Sessions Judge-cum-Special Judge (Excise), West Champaran at Bettiah:

(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, West Champaran at Bettiah 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, if any or trial;

(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 learned Court below to conclude whole exercise of release 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 is allowed to the extent as indicated above.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

Ashwini/-

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

