

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.23460 of 2019

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Rambabu, son of Sri Ram Naresh Singh, resident of Village- Nanand, Police Station- Silao, District- Nalanda. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Prohibition and Excise, Government of Bihar, Patna.
2. The District Magistrate, Nalanda at Biharsharif.
3. The Superintendent of Police, Nalanda at Biharsharif.
4. The Superintendent of Excise, Nalanda at Biharsharif.
5. The Sub Divisional Police Officer, Hilsa, District Nalanda.
6. The Police Sub Inspector cum Station House Officer, Telhara Police Station, District Nalanda.
7. The Station House Officer, Ekangarsarai Police Station, District- Nalanda.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Md.Imteyaz Ahmad
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)

(The proceedings of the Court are being conducted through Video Conferencing and the Advocates joined the proceedings through Video Conferencing from their residence.)

Date : 03-07-2020

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

This writ petition has been filed by the petitioner for
release of BAJAJ Pulsar motorcycle being registration no. BR
21U 8066, Chasis No.MD2A11CYXJRH48886 and Engine
No.DHYRJH68979 (Color Black/Blue) which has been seized
in connection with Telhara P.S. Case No.118 / 2019 dated
13.9.2019 for the offence instituted under Section 30(a) of Bihar



Prohibition & Excise Act, 2016. Petitioner is a registered owner of said vehicle which is duly insured.

Allegation in FIR lodged by Sub-Inspector of Police is recovery of 33 litres of country made liquor from a plastic bag behind Panchayat Bhawan, however, 5 accused as named in FIR, managed to flee away on seeing the police and from place of occurrence, two motorcycles were recovered and seized.

It is submitted on behalf of petitioner that petitioner is owner of the Pulsar vehicle which was looted away by the miscreants on 11.8.2019 on strength of arms for which he had instituted an FIR being Ekangarsarai P.S. Case No.225/2019 dated 11.08.2019 under Section 392 of IPC and same looted motorcycle was recovered by the police in present case where his looted motorcycle was used by the miscreants in illicit trade of liquor and neither petitioner is accused in present case nor he has any concern with present crime.

It is submitted by the petitioner that no confiscation case has been initiated against the seized motorcycle which belongs to petitioner and he has not received any such notice. In view of several judgments passed by this Court as well as order passed by the Excise Commissioner in Appeal being Confiscation case No.107 of 2019 (Ajit Rai and others versus



Collector, Shivwhar), as no illicit liquor has been recovered from the seized motorcycle, same is not liable for confiscation and as such bar of jurisdiction in confiscation under Section 60 of the Excise Act is not applicable and concerned Special Court (Excise) can exercise its jurisdiction under Section 451 of Cr.PC for release of the vehicle during pendency of criminal trial.

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) and the vehicle shall be provisionally released in favour of petitioner, after due identification and production of ownership documents on terms and conditions as usually imposed by the trial court, while provisionally releasing the vehicle during pendency of trial, within 30 days from the date of filing of such petition by the petitioner along with a copy of order passed by this Court.

(Sanjay Karol, CJ)

Sanjay/ ranjan/-

AFR/NAFR	
CAV DATE	
Uploading Date	26.07.2020
Transmission Date	

(S. Kumar, J)

