

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24307 of 2019

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Mukesh Kumar Son of Surendra Singh Resident of Village- Barwadih, P.S.-
Barun Aurangabad District- Aurangabad.

... .. Petitioner/s

Versus

1. State of Bihar through District Magistrate, Aurangabad, Dist.- Aurangabad.
2. Excise Superintendent Aurangabad, Dist.- Aurangabad.
3. Sub Inspector, Excise Aurangabad, Dist.- Aurangabad.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bachan Jee Ojha
For the Respondent/s : Mr. Vikash Kumar (Sc11)

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CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

3 06-07-2020 Heard learned counsel for the petitioner and learned
counsel for the State.

Petitioner has prayed for following relief:-

“(i.) For issuance of an appropriate writ in
the nature of mandamus directing the respondent
authorities to release the Motor Bike vide Registration
No.BR-26-J-9702 (Bajaj) in favour of the petitioner
which was seized by respondent no.3 and also recovered
180 liter country made liquor. The vehicle is standing in
the premises of police station Barun and registered a case
vide Barun P.S. Case No. 237/2019 for the offence under
Section 30(a) of the Bihar Excise Prohibition Act, 2016.”

Petitioner claims to be owner of the vehicle and there is
no allegation of recovery of any illicit liquor from the vehicle



as such, the vehicle 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 case arising out of Barun P.S. Case No.



237/2019 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)

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