

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.4 of 2020

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Dayanand Kumar Sharma @ Dayanand Kumar, Son of Shri Sadhu Sharan Sharma, Resident of Village-Naya Tola (Ward No. 2), P.S.-Lakhisarai, District-Lakhisarai.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department, Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The Inspector General of Police, Bihar, Patna.
4. The Deputy Inspector General of Police, Bihar, Patna.
5. The Collector cum District Magistrate, Lakhisarai, Bihar.
6. The Superintendent of Police, Lakhisarai.
7. The Deputy Superintendent of Police, Lakhisarai.
8. The Station House Officer, Lakhisarai (Kawaiya), Police Station, Lakhisarai cum-Investigating Officer of Lakhisarai (Kawaiya) P.S. Case No. 649/2019.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Ms. Sudha Ambastha
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 : 03-02-2020

Heard learned counsels for the parties.

The present writ application has been preferred for release of Hero Passion X-Pro motorcycle of the petitioner,



bearing Registration No. BR53C-0291, which has been seized in connection with Lakhisarai (Kawaiya) P.S. Case No. 649 of 2019, registered for the offences under Sections 30(a) and 32(2) 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 contained in paragraph no.1 of the writ application, reads as follows:-

“(i) To issue a writ of MENDMUS for releasing the vehicle of the petitioner, which was seized by the SHO cum Investigation Officer of Lakhisarai (Kawaiya) (Respondent No.8), in Lakhisarai (Kawaiya) P.S. Case No. 649/2019 (dated-24.8.2019) corresponding to Excise No. 294/2019 (pending before Ld. Addl. Sessions Judge-II (Spl. Judge Excise Act), Lakhisarai), under Excise Act whereby and where under the Respondent authority has refused to release the vehicle of the petitioner.

(ii) For a direction to the respondents authorities to release the vehicle in question PASSSION-X PRO bearing registration no. BR53C-0291, seized by the Bihar Police in connection with Lakhisarai (Kawaiya) P.S. Case No. 649/2019, registered under Section 30(a)/32(2), of the Bihar Prohibition & Excise (Amendment) Act,



2016, which is kept in the premises of Lakhisarai (Kawaiya) Police Station, Lakhisarai.

(iii) Further for a direction to the respondents authorities to release the said motorcycle in favour of the petitioner, who is bonafide owner. Admittedly it has never been used in commission of an offence under this Act.”

The prosecution case, as per the written report of Ram Nath Singh, A.S.I., submitted to the S.H.O., Lakhisarai (Kawaiya) Police Station, is to the effect that on 24.08.2019, during the patrolling, one motorcycle was intercepted and from the said motorcycle, 800 ml of Mahua liquor was recovered, leading to registration of Lakhisarai (Kawaiya) P.S. Case No. 649 of 2019.

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 of the vehicle 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, statement to that effect has been made in paragraph no.10 of the petition which reads as follows:-

“.... Till date no nconfiscation proceeding has been initiated regarding the seized motorcycle in Lakhisarai (Kawaiya) P.S. Case No. 649 of 2019.”



The First Information Report has been registered on 24.08.2019, and the present writ petition was registered on 04.01.2020 and by order dated 13.01.2020, on the request of learned Counsel for the respondents, the matter was adjourned for 27.01.2020 to seek instruction and file counter affidavit, but till today, counter affidavit has not been filed on behalf of the respondents.

It appears that after the matter was adjourned, the proposal for initiation of confiscation proceedings has been transmitted but till date confiscation proceeding with regard to the vehicle in question has not been initiated.

Having heard learned Counsel for the parties and considering their rival submissions, we are of the considered view since the confiscation proceeding has not been initiated with regard to the vehicle in question, and there is no likelihood of trial being concluded in near future due to huge pendency of cases under the Act in question coupled with the fact that vehicle in question, at best, can be kept in seized condition only for the purpose of producing the same as material exhibit during the trial.

In the facts and circumstances of the present case, no useful purpose will be served in allowing the vehicle to rot under the open sky, leading to a complete wastage of public money.



Keeping the vehicle in such condition and allowing to reduce it into junk, would ultimately result into wastage of public money has been deprecated by the Supreme Court, in the cases of *Sunderbhai Ambalal Desai Vs. State of Gujrat and other*, reported in (2002) 10 SCC 283 and *General Insurance Council and Ors. Vs. State of Andhara Pradesh and Ors.*, reported in (2010) 6 SCC 768.

Moreover, learned counsel for the respondents has no objection to the provisional release of the vehicle in question, we direct that the same be released provisionally till the conclusion of the trial, if any, on the following conditions to the satisfaction of learned Additional District and Sessions Judge-cum-Special Judge (Excise), Lakhisarai and in case if the confiscation proceeding has been initiated, then it will be released subject to the satisfaction of Collector, Lakhisarai:

(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, Lakhisarai 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;

(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.

The entire exercise will be done by the learned Court below 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.)

Rishi Kumar/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	03-03-2020
Transmission Date	N/A

