

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24642 of 2019

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Krishn Kumar Kanhaiya, S/o- Baldev Ray, resident of village- Baikunthpur,
P.s. - Rajapakar, District- Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Excise Department,
Patna, Bihar.
2. That Collector/ District Magistrate, Vaishali.
3. The Superintendent Vaishali.
4. The Excise Superintendent , Vaishali.
5. The Excise Inspector, Vaishali.
6. The Office In-charge Rajapakar, P.S.- Vaishali.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Alok Kumar Alok, Adv.
For the Respondent/s	:	Mr.Vikash Kumar, SC-11
		Mr. Rewati Kant Raman, AC to SC-11

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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 : 04-02-2020

Heard learned counsel for the petitioner and
learned AC to SC-11 for the respondents.

The present Writ Application has been filed for
release of Hero Splendor Motorcycle in favour of the petitioner,
bearing Registration No. BR-31AG-7255, seized in connection
with Rajapakar P.S. Case No.260 of 2019, registered for the
offences punishable under Section 30(a) of the Bihar Prohibition
and Excise Act, 2016, as amended by the Amendment Act of



2018.

The prosecution case as per the written report of A.S.I., Navin Shukla submitted to the S.H.O. (O.P.), Barari to the effect that on 03.11.2019 at 7.30 A.M., one blue coloured Hero Splender Motorcycle was intercepted on which, two persons were travelling with a plastic bag, kept in between them on the seat. During frisking, 40 litres Country Made Liquor were recovered from the bag, leading to registration of Rajapakar P.S. Case No. 260 of 2019.

It is submitted by learned counsel for the petitioner that the petitioner is the registered owner of the vehicle in question and the certificate of registration has been brought on record, as Annexure-2. The seized vehicle in question is rotting under the open sky. It is further submitted that the seizure has been made by an A.S.I., whereas, Section 73(e) of the Act mandates that the seizure cannot be made by any officer below the rank of Sub Inspector of Police. Hence, moreover, the seizure vitiates the entire prosecution case. Moreover, till date no confiscation proceeding has not been initiated whereas Section 58(1) of the Act mandates for transmission of report by the seizing or detaining authority to the District Magistrate of the jurisdiction without any delay.



It is submitted by learned counsel for the respondents that he has not received any instruction to file counter affidavit. Though the matter was heard and vide order dated 13.12.2019, the matter was adjourned for 20.01.2020 and thereafter it was adjourned for two more times. However, he has received telephonic message from the office of the District Magistrate, Vaishali that no proposal or report has been received under Section 58(1) of the Act for initiating confiscation proceeding. It is further submitted that admittedly, the liquor was being transported through the vehicle in question, hence, it is liable for confiscation under Section 56(b) of the Act.

Having heard learned counsels for the parties and considering their rival submissions, it is not in dispute that country made liquor has been recovered from the vehicle in question, but the FIR was registered on 03.11.2019 and the writ application was registered on 09.12.2019 and thereafter it was heard on 13.12.2019 when this Court at the request of the learned AC to SC-11, adjourned the matter for 20.01.2020 enabling him to file counter affidavit. Thereafter, the matter was again adjourned twice, but till date, counter affidavit has not been filed on behalf of the respondents. Report under Section 58(1) of the Act has been received by the District Magistrate,



Vaishali for initiation of confiscation proceeding. Moreover, the seizure was made by A.S.I. of Police whereas Section 73(e) of the Act mandates that the seizure cannot be made by any officer below the rank of Sub Inspector of Police and Section 58(1) of the Act mandates for transmission of report by the seizing or the detaining authority without any reasonable delay. Hence, the very seizure appears to be de hors the provisions of the Act.

In the facts and circumstances of the present case, no useful purpose will be served in allowing the vehicle to rot under open sky only for the purpose of material exhibit, leading to a complete waste of public money. Keeping the vehicle in such condition and allowing it to rot will ultimately reduced to a junk 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.* reported in, (2010) 6 Supreme Court Cases 768.

Accordingly, we direct that the same be released provisionally till the conclusion of the trial or till conclusion of confiscation proceeding, if any, to the satisfaction of the learned A.D.J.-cum-Special Judge (Excise) or Collector, Vaishali, on the following conditions :-



(I) The petitioner will produce the proof of valid certificate of registration/ownership in his favour including the insurance papers before the learned ADJ-cum-Special Judge (Excise), Vaishali;

(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 Special Court concerned 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 for release is expected to be concluded by the Special Judge or the Collector, Vaishali 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 accusation 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	
CAV DATE	
Uploading Date	
Transmission Date	

