

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2321 of 2020

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Kunal Kumar Son of Anil Rai Mahuari Bagicha, Sarari Saral, P.S.- Maner,
District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Registration and Excise Department, Government of Bihar, Patna.
2. The District Magistrate cum Collector, Patna.
3. The Superintendent of Police, Patna, District- Patna.
4. The In-charge of Patliputra (P.S.), Patliputra Distt- Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Kameshwar Singh
For the Respondent/s : Mr.Kumar Manish (Sc5)

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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 : 09-07-2020

Heard learned counsel for the petitioner and learned

counsel for the State.

Petitioner has prayed for following relief:-

“ This is an application for issuance of appropriate writ/writs order or orders, direction/directions commanding the respondent authorities to release Hero Motorcycle Passion Pro PPRIDRSCC of the petitioner bearing registration No.BR01-DL-1910 of White Colour two wheeler motorcycle having Chassis No.MBLHAR180HHH26448 Engine No.HA10ACHHH62528 which was seized on 11.7.19 Patliputra P.S. Case No.278/19 under Section 30(a) 38/37 (b)



(c) of Bihar Prohibition and Excise Act, 2016 and since then the motorcycle in question is standing uncared and subject to day by day decay.

Petitioner further seeks any other relief/reliefs for which he is found entitled in the eye of law and in the facts and circumstances of the present case.”

Informant is a police officer who in his written complaint has alleged that on receiving specific information that 10 to 15 persons are consuming liquor, he raided the place and one accused was arrested and 11 litre of country made mahua liquor along with three motorcycles parked there in abandoned condition were recovered and seized for which FIR was registered giving rise to Patliputra P.S. Case No.278/19 under Section 30(a) 38/37(b)(c) of Bihar Prohibition and Excise Act, 2016.

It is submitted on behalf of petitioner that no illicit liquor has been recovered from the seized vehicle which is apparent from the FIR as well as seizure memo as such seized vehicle is not liable for confiscation under Section 56 of the Excise Act and bar of jurisdiction in confiscation as contemplated under Section 60 of the Act is not applicable and the Special Court, Excise where the excise case is pending has jurisdiction to pass order of provisional release of the vehicle.

In view of law laid down by Division Bench of this Court in case of Diwakar Kumar Singh vs. State of Bihar since



reported in 2018 (3) PLJR 403 and following said judgment as well as other judgments passed by this Court, the Excise Commissioner, Bihar Patna in appeal arising out of Confiscation Case No. 107/2019 Ajit Roy Vs. Collector, Sheohar has held that transportation of prohibited article under the Act is a sine qua non for a vehicle to be confiscated.

The relevant paragraph of order passed in Appeal by Excise Commissioner is quoted below:-

“From the aforesaid judgment and order passed by the Hon’ble High Court of Patna it is well established that the transportation of prohibited article under the Act, 2016, is a sine qua non for a vehicle to be confiscated on the passing of an order by the District Collector. Therefore the confiscation order passed by the learned Collector, Sheohar in confiscation Case No. 107/2019 on 09.12.2019 is hereby ordered to be modified to the extent that the three motorcycles bearing registration No. BR-06BJ 6591; BR-06BL 5384 and BR-55 4036 will be released after verifying the document related to registration and owner of the said vehicle.”

It is submitted that no confiscation proceeding has been initiated by the District Collector against the said vehicle, however, if any, confiscation proceeding has been initiated, same is directed to be dropped.

Accordingly, petitioner is directed to file an application before the concerned Special Court (Excise) under Section 451 of Cr.P.C. for interim release of the vehicle which has been



seized by the police in the case as same are not liable for confiscation and as such it is the Special Court (Excise), which can pass an order for interim release of the vehicle, with terms and conditions of release as usually imposed. If any such application is filed by the petitioner same to be disposed of within 30 days from the filing of said application.

With the aforesaid observation and direction, this writ petition is disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	29.07.2020
Transmission Date	NA

