

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.24605 of 2019**

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Sumrit Ray, aged about 54 years (M) son of late Avadh Lal Ray, resident of village- Sahabazpur Bhadeshwar, Police Station- Jogbani, District- Araria.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Excise, Government of Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The District Magistrate, Araria.
4. The Superintendent of Police, Araria.
5. The Superintendent of Excise, Araria.
6. The S.H.O., Jogbani Police Station, District- Araria.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Mukesh Kumar Rana  
For the Respondent/s : Mr. Vivek Prasad ( Gp7 )

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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 Mr. Mukesh Kumar Rana, learned counsel for the petitioner and Mr. Vivek Prasad, learned G.P. 7.

The present writ application has been filed for release of HF DELUXE motorcycle bearing registration no. BR38R- 9827 seized in connection with Jogbani P.S. Case No. 273 of 2019 registered for the offences punishable under Section 30(a), 38(2) of the Bihar Prohibition and Excise Act, 2016 as amended by the Amendment Act 8 of 2018 (hereinafter referred to as 'the Act').



The relief, as prayed for, has been stipulated in paragraph no. 1 of the present writ petition, which reads as follows:-

*“i. To issue writ of mandamus directing and commanding the respondents to release the motorcycle of the petitioner bearing registration no. BR38R-9827, chassis no. MBLHAW037K9B02944 and Engine no. HA11ENK9B01721, which was seized on 18.09.2019 in Jogbani Police Station Case No. 273 of 2019 registered under sections – 30(a), 38(i) of the Bihar Prohibition and Excise Act, 2016 for alleged recovery of total 18 liters Nepali country made wine for which confiscation proceeding has not been initiated till date.*

*ii. Any other relief or reliefs which the petitioner may be found entitled to in the facts and circumstances of the case.*

The prosecution case got initiated on the basis of written report of A.S.I. Suman Kalyan submitted to the Station House Officer, Jogbani P.S. to the effect that on 18.09.2019 during the course of patrolling, the motorcycle in question was intercepted and from the said motorcycle, 18 liters of Nepali liquor was recovered.



It is submitted by learned counsel for the petitioner that petitioner is the registered owner of the vehicle in question and statement to that effect has been made in paragraph no. 6 of the writ petition. The certificate of registration of the vehicle in question has been brought on record, as Annexure -2 to the present writ petition. He further submits that the vehicle in question is rotting in open sky and keeping the vehicle in such condition and allowing it to reduce into a junk would ultimately result into waste of public money. Hence, the vehicle in question may be released forthwith.

Mr. Vivek Prasad, learned G.P. 7, relying upon the counter affidavit filed on behalf of respondent no. 2 submits that from perusal of the same, it appears that the Superintendent of Police, Araria vide letter no. 3484 dated 11.12.2019 has send the recommendation to the District Magistrate, Araria and consequently, Confiscation Case No. 470 of 2019 has been initiated, in which, notices have been served upon the petitioner, vide memo no. 35 dated 01.01.2020.

It appears that seizure has been done by the A.S.I., which is not contrary to the mandate of Section 73(1)(e) of the Act, which authorizes any Police Officer not below the rank of Sub Inspector to make seizure whereas, Section 58(1) of the Act



mandates anything which is liable to be confiscated under Section 56 of the Act report has to be transmitted by the seizing or detaining authority without unreasonable delay to the District Magistrate having jurisdiction. However, in the present case recommendation was transmitted by the Superintendent Of Police on 11.12.2019 whereas seizure was made on 18.09.2019. The writ application was filed on 07.12.2019 and the matter was taken up on 13.12.2019 and it appears that after more than two weeks of the same, notices were issued on 01.01.2020. No doubt the Act being the most stringent one, the procedural safeguards have to be followed and the confiscation authority has to look into the fact whether the report or recommendation for confiscation has been made by the proper authority or not. If the seizure was conducted violating the procedural mandates given in the law initially, the whole proceeding subsequent to that gets vitiated. However, since the confiscation proceeding has been initiated with regard to the vehicle in question, hence in view of the law laid down by the Full Bench of this Court in the case of Baleswar Roy and Ors. Vs. The State of Bihar and Ors. reported in 2018(4) PLJR 970 has force wherein it has been held that on initiation of confiscation proceeding, this Court cannot interfere and exercise jurisdiction



under Article 226 of the Constitution of India except in monstrous conditions, paragraph nos. 62 to 66 of which reads as follows:-

*“62. It may, however, be added that Article 226 of the Constitution of India provides power to the High Court to issue writs to any person or authority, including in appropriate cases, any Government, any order or writs (including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part-III and for any other purpose). Similarly Article 227 of the Constitution of India provides the power of superintendence over all Courts and Tribunals throughout the territories in relation to which any High Court exercises its jurisdiction. The powers of the High Court under Articles 226 and 227 of the Constitution of India cannot be curtailed under any circumstance, as the power flows from the Constitution itself. No statutory bar can affect the power of the High Court under Articles 226 and 227 of the Constitution of India.*

*63. Despite such wide and untrammelled powers, without any circumscription by external restrictions, the Courts have evolved certain self-imposed*



*limits while exercising these powers. The High Courts, normally, would not go beyond justified inhibitions under any Statue except where there is a complete jettisoning of rule of law or under exceptional circumstances which demand timely judicial interdict. This inhibition is basically ordained, keeping in mind that there is a national weal behind any valid piece of Legislation incorporating and inhering in itself the social objective behind any Legislation. Though, no limitations or fetters have been put on the powers of the High Court under Articles 226 and 227 of the Constitution of India, as the High Courts perform as sentinel on the qui-vive, but such power is not to be exercised casually and without coming to the conclusion that non-exercise of such power would lead to positive injustice. Times without number, it has been held by the High Courts that only under condition of a person establishing that substantial injustice has or is likely to ensue, such extraordinary powers can be exercised. It needs no adumbration by this date that the plenary powers of the High Court have only to be exercised in the interest of justice.*



64. Thus, an order of release may be passed under Article 226/227 of the Constitution of India, even pending confiscation proceedings, but only when it is established before the Court that the procedure prescribed and the law in that regard has been completely flouted and that there is complete violation of the procedure prescribed for confiscation, viz., notice to the offender before confiscation, allowing him opportunity of giving written representation and affording hearing on the issue to him and that such injustice cannot be remedied without the exercise of the extraordinary power.

65. Needless to state that under Article 226 of the Constitution of India, the Court will not go into the disputed question of facts.

66. Thus, the powers directing for release of the vehicles or goods, during the pendency of the confiscation, can only be sparingly exercised under monstrous situations and circumstances when injustice occurs because of non-fulfillment of the conditions for confiscation.”

In view of the aforementioned ratio laid down by the Full Bench, we are not inclined to interfere at this stage. However, the petitioner is given liberty to appear in the



aforementioned confiscation proceeding. It is expected from the Respondent No. 03, the District Magistrate, Araria to examine the issue discussed above as a preliminary issue and then to proceed and conclude the confiscation proceeding if it has not been already concluded, after giving due opportunity of hearing to all the affected persons / parties, in accordance with law within a period of six weeks from the date of receipt /production of a copy of this order

In case the confiscation proceeding is not concluded within the aforesaid time frame, the petitioner will be at liberty to renew his prayer for release of the vehicle in question in case there are no laches in his part.

With above observation and direction this writ petition is disposed of.

**(Dinesh Kumar Singh, J)**

**( Anil Kumar Sinha, J)**

praful/-

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