

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.25152 of 2019

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Ashok Kumar @ Ashok Rai, Son of Late Modi Rai @ Late Moho Rai,
Resident of Village- Taal Dashahara Garuara, P.S.- Mufassil Samastipur, Dist-
Samastipur Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Bihar Prohibition and Excise Act, Govt. of Bihar, Patna.
2. The Collector-cum-District Magistrate, Samastipur.
3. The Senior Superintendent of Police, Samastipur.
4. The Excise Superintendent, Samastipur.
5. The Police Inspector -cum- Thanadhyaksha, Police Station- Mufassil Samastipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Ms. Smriti
For the Respondent/s : 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 : 29-01-2020

Heard Ms. Smriti, learned counsel for the petitioner and
Mr. Rewati Kant Raman, learned A.C. to S.C. 11 for the
respondents.

The present writ application has been filed for release of
Tata Tigor XZ 1.2 RTN BS4, bearing Registration No. BR01DR-
7725, seized in connection with Muffasil P.S. Case No. 238 of
2019, registered for the offence punishable under Section 30(a) of
the Bihar Prohibition and Excise Act, 2016, as amended by
Amendment Act 8 of 2018 (hereinafter referred to as 'the Act').



The prosecution case got initiated as per the written report of Parshuram Singh, Assistant Sub Inspector of Police, Mufassil Police Station, submitted to the S.H.O., Mufassil Police Station, to the effect that on 24.06.2019, at 12:30 PM, an information was received that one Jugal Rai had stored liquor in his house and is trying to transport it through a four-wheeler vehicle. Consequently, raid was laid in the house of said Jugal Rai and in the bathroom constructed near the house of Jugal Rai, 528 litres of Indian Made Foreign Liquor was recovered, which was seized and one vehicle, bearing registration no. BR01DR-7725, parked near the said house was also seized.

It is submitted on behalf of the petitioner that admittedly, there is no recovery from the vehicle in question and there is nothing on record to suggest that the said vehicle was being used for transporting the liquor. The petitioner claims to be the registered owner of the vehicle and certificate of registration of the vehicle in question has been annexed as Annexure-1 to this application. She further submits that the petitioner is ready to present the vehicle in question as and when required and will not transfer the same to another person and modify or change the shape of the vehicle in question. A statement has been made in



paragraph 10 of the application that the petitioner has not received any notice with regard to confiscation proceeding till date.

It is submitted by learned Counsel for the respondents-State, that though on 07.01.2020, the matter was adjourned for 20.01.2020 to seek instruction and file counter affidavit, but no instruction has been received as yet. He further admits that there is no recovery of liquor from the vehicle in question. This is also admitted fact that the vehicle in question does not belong to the person from whose house, liquor was recovered.

It is admitted position that seizure was made by Assistant Sub-Inspector of Police, which is contrary to Section 73 (e) of the Act, which mandates that the seizure shall be made by any police officer not below the rank of Sub Inspector. Section 73 of the Act reads as follows:

“73. Power to enter, inspect, search and seize

– (1) Any of the following officers namely :-

- (a) The Excise Commissioner; or
- (b) The Collector; or
- (c) Any block level officer and above of the District authorized by the Collector; or
- (d) Any Excise Officer; or
- (e) Any police officer not below the rank of Sub Inspector; or



(f) Any other officer or agency or force armed or otherwise, authorized for this purpose by the State Government;

may, without warrant but subject to such restrictions as may be prescribed by the State government, enter, inspect, search any place at any time, day or night, and seize any document, sample, equipment, conveyance, animal, commodity, intoxicant, material, raw material or any other item of concern.”

This is also not in dispute that there is no recovery of liquor from the vehicle in question, hence, *prima facie*, it cannot be said or presumed that the vehicle was being used for transportation of the seized liquor.

Since no counter affidavit has been filed on behalf of the respondents, there is nothing on record to show that confiscation proceeding has been initiated.

Considering the fact that no useful purpose would be served to allow the vehicle to rot, hence we are constraint to direct that the same be released provisionally till the conclusion of the trial, if any, on the following conditions to the satisfaction of the learned Additional Sessions Judge II -cum- Special Judge, Excise, Samastipur:-

(I) The petitioner will produce the proof of valid certificate of registration/ownership in his favour including the



insurance papers to the satisfaction of Special Judge, Excise, Patna;

(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 will be made by the Special Judge
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
indicated above.

(Dinesh Kumar Singh, J.)

(Anil Kumar Sinha, J.)

Rishi/Prabhakar

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	04-02-2020
Transmission Date	N/A

