

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24440 of 2019

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Baby Singh age 41 yrs. W/O Ram Layak Singh, R/O South of Devi Asthan,
Ram Krishna Nagar, Sorangpur, Sampatchak, P.S.- Ram Krishna Nagar,
District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. Excise Commissioner, Bihar, Patna.
3. D.M., Patna.
4. S.S.P, Patna.
5. S.H.O., Khagaul, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mrs. Rina Sinha

For the Respondent/s : Mr. Prashant Kumar, AC to SC-5

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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 : 21-01-2020

Heard Mrs. Rina Sinha, learned counsel for the
petitioner and Mr. Prashant Kumar, learned A.C. to Standing
Counsel No. 5.

The present writ application has been filed for release of
MARUTI DZIRE VXi Car bearing Registration No.
BR01DZ8111, which has been seized in connection with Special
Case No. 9235 of 2019 (arising out of Khagaul P.S. Case No. 271
of 2019) registered for the offence punishable under Section 30 (a)
of the Bihar Prohibition and Excise Act, 2016 as amended by the
Amendment Act 8 of 2018 (hereinafter referred to as 'the Act').



The prosecution case as per the written report of Jay Prakash Yadav, Police Sub Inspector, Khagaul P.S. addressed to the Station House Officer, Khagaul P.S. is to the effect that on 18.10.2019 at 6.00 P.M., in the course of vehicle check, when the Car in question was intercepted, two persons namely, Prince Ujjain and Nitish Kumar were found occupying the car and from the vehicle in question 220.530 liters of Indian made foreign liquor was recovered leading to registration of the Khagaul P.S. Case No. 271 of 2019 on 18.10.2019 under Section 30(a) of the Act.

It is submitted by learned counsel for the petitioner that the petitioner is the registered owner of the vehicle in question. The certificate of registration and the insurance policy have been brought on record as Annexure - 2 Series to the writ petition. It is further submitted that the vehicle in question is rotting in open sky and the confiscation proceeding has not been initiated till date. Learned counsel for the petitioner relying upon the counter affidavit has submitted that the counter affidavit has been filed on behalf of the respondent no. 3 i.e. District Magistrate, Patna but it has been duly sworn by Prahlad Prasad Bhushan, Assistant Excise Commissioner, Patna. He further submits that a statement has been made in paragraph no. 5 of the said counter affidavit that the District Magistrate, Patna vide letter no. 1258 dated 26.12.2019



has directed the Senior Superintendent of Police, Patna to send the confiscation proposal.

The above mentioned statement made in the counter affidavit amply suggests that confiscation proceeding has not been initiated till date nor any report under Section 58(1) of the Act has been submitted. Section 58(1) of the Act does not require any initiative on behalf of the Collector to ask the Superintendent of Police to send the confiscation proposal. The above mentioned statement reflects that the District Magistrate, Patna is not aware of the provisions incorporated under Section 58(1) of the Act or is deliberately acting against the provisions of law.

Section 58(1) of the Act mandates the seizing or the detaining authority to submit a report to the Collector of the said area if anything which is liable to be confiscated under Section 56 of the Act, without any reasonable delay. In the present case the F.I.R. was registered on 18.10.2019, the writ application was filed on 05.12.2019 and thereafter, the matter was adjourned vide order dated 12.12.2019 on the prayer of learned counsel for the respondent -State to enable him to seek latest instruction and file detailed counter affidavit but the Collector contrary to the above mentioned provision ask for report for initiating confiscation proceeding.



Considering the admitted position that confiscation proceeding has not been initiated till date and in such circumstances the vehicle will rot and will reduce to junk and would ultimately result into waste of public money which has been deprecated by the Hon'ble Supreme Court in the case of *Sunderbhai Ambalal Desai Vs. State of Gujrat* and other analogous cases reported in (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 and 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 or till the conclusion of confiscation proceeding, if any, to the satisfaction of learned Special Judge (Excise), Patna on the following conditions:-

(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. 1,00,000/- but not in the form of bank guarantee or cash, with two sureties of the like amount to the satisfaction of the Special Judge (Excise), Patna 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.”



We make it clear that we have not expressed any opinion on the merits of the case and this order will not preclude the authority concerned or the court to act under the provisions of the Act.

Keeping in mind that it is a very stringent Act and in such a case it is well settled law that the procedural safeguards have to be strictly followed, we further make it clear that if we find the court or the investigating agency or the authorities concerned are not following the safeguards, then appropriate order shall be passed against them for procedural lapses.

Accordingly, the writ petition is allowed to the extent as indicated above.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

praful/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	28-01-2020
Transmission Date	NA

