

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24656 of 2019

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Poonam Kumari, female, aged about 20 years d/o Dhaneshwar Paswan @
Dhaneshwar Paswan @ Dhaneshwar Poonam, resident of village- Dumriyahi,
Ward No. 01, Post - Karmauli, Police Station - Khajauli, District- Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Prohibition and Excise Act, Govt. of Bihar, Patna.
2. The District Magistrate, Madhubani.
3. The Superintendent of Police, Madhubani.
4. The Officer Incharge, Jainagar, District- Madhubani.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjay Kumar Jha
For the Respondent/s : Mr. Rewati Kant Raman , A.C. to S.C. 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 : 03-02-2020

Heard Mr. Sanjay Kumar Jha, learned counsel for the petitioner and Mr. Rewati Kant Raman, learned A.C. to S.C. 11.

The present writ application has been filed for release of Hero Glamour motorcycle bearing registration no. BR-32AB-0825 which has been seized in connection with Jainagar P.S. Case No. 352 of 2019 registered for the offences punishable under Sections 272, 273 of the Indian Penal Code, 1860 and 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 relief, as prayed for, has been stipulated in paragraph no. 1 of the writ petition, which reads as follows:-



“That this application is being filed for issuance of an appropriate writ or writs, order or orders, direction or directions commanding the appropriate respondents to release the Hero Glamour Motorcycle bearing Registration No. BR-32AB-0825, Chasis No. MBLJAR022KGB04543, Engine No. JA06ERKGB54468 in the favour of the petitioner which has been seized by Police in connection with Jainagar Police Station Case No. 352 / 2019 dated 21.7.2019 registered under Section 272 / 273 of the I.P.C. and 30(a) Bihar Prohibition and Excise Act, 2016.

The prosecution case got initiated on the basis of written report of Shiv Nath Sharma, Sub Inspector of Police, Jainagar P.S. submitted to the S.H.O., Jainagar P.S., Madhubani to the effect that on 21.07.2019, on a secret information, two motorcycles were intercepted and from the motorcycle of the petitioner bearing registration no. BR-32AB-0825 (Hero Glamour), 36 liters of Nepali liquor and from the another motorcycle bearing registration no. BR-32M-2168 (Passion Pro), 09 liters of Nepali liquor were recovered, leading to registration of Jainagar P.S. Case No. 352 of 2019 on 21.07.2019.

It is submitted by learned counsel for the petitioner that petitioner is the registered owner of Hero Glamour Motorcycle



bearing registration no. BR-32AB-0825. The certificate of registration of the same has been brought on record, as Annexure-2 to the present writ petition. A statement has been made in paragraph no. 6 of the writ petition that till date, confiscation proceeding has not been initiated. However, a counter affidavit has been filed on behalf of respondent nos. 2 and 3 i.e. the District Magistrate, Madhubani and Superintendent of Police, Madhubani respectively suggesting that confiscation proceeding has already been initiated vide Confiscation Case No. 813 of 2019-20 on 16.10.2019 and notices have been issued only to the accused persons and since the petitioner was not an accused, hence notice has not been issued to the petitioner and statement to that effect has been made in paragraph nos. 10 and 11 of the counter affidavit.

The motorcycle is rotting under the open sky and keeping the vehicle in such condition and allowing to reduce it into a junk 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.



From perusal of the record, it appears that proposal / report under Section 58(1) of the Act transmitted by the seizing or detaining authority has not been brought on record and the order dated 16.10.2019 passed by District Magistrate, Madhubani in Confiscation Case No. 813 of 2019-20 reflects that Superintendent of Police, Madhubani transmitted report under Section 58(1) of the Act vide letter no. 3223 dated 24.09.2019, who is definitely not the seizing or detaining authority under the Act. Moreover, Annexure - B to the counter affidavit suggests that notices have only been issued to Amarjeet Yadav and Chandan Kumar Paswan i.e. the accused persons, not the petitioner and this fact has been mentioned in paragraph no. 11 of the counter affidavit, which reads as follows:-

“11. That in the aforesaid confiscation proceeding a show cause notice has been issued to the accused persons and same has been duly served upon them and one of the accused persons has already appeared in the aforesaid proceeding.”

In the circumstances, we find that neither the report under Section 58(1) of the Act nor the order dated 16.10.2019 initiating confiscation proceeding suggest that the concerned authority had no knowledge as to who is the actual owner of the



vehicle in question, which has been sought to be released by the petitioner, which suggests a casual and callous manner in which a *quasi* judicial proceeding is being conducted by the authorities. From the materials on record, it appears that *prima facie* no notice has been issued to the petitioner, being the owner of one of the seized motorcycles. In the circumstances, it will be safely presumed that there is no confiscation proceeding deemed to have initiated against vehicle of the petitioner. The motorcycle is rotting under the open sky and keeping the vehicle in such condition and allowing to reduce it into a junk 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.

Hence, we direct for release of the motorcycle provisionally till the conclusion of the confiscation proceeding to the satisfaction of learned District Magistrate, Madhubani 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. 50,000/- but not in the form of bank guarantee or cash, with two sureties of the like amount to the satisfaction of the District Magistrate, Madhubani 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 shall be done by the learned Court below or the confiscation authority within a period of ten days from the date 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 disposed of.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

praful/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03-03 -2020
Transmission Date	NA

