

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24825 of 2019

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Ram Kumar Sah, Son of Ramchalitar Sah, resident of Village- Dhabauli Ward
No. 14, P.S.- Dumra, District- Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Home (Police), Government of Bihar, Patna.
2. The Principal Secretary, Excise and Prohibition Department, Government of Bihar, Patna.
3. The Director General of Police, Bihar, Patna.
4. The District Magistrate, Sitamarhi.
5. The Superintendent of Police, Sitamarhi.
6. The SHO, Dumra Excise Officials, Sitamarhi.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ashhar Mustafa, Adv. Mr. Abu Nasar, Adv.
For the Respondent/s	:	Mr. Vikash Kumar, SC-11 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 : 25-02-2020

Heard learned counsels for the parties.

The present writ application has been filed for release of Hero Glamour motorcycle bearing Registration No. BR30V4526 seized in connection with C2-182 of 2019, registered 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 prayer as stipulated in paragraph No.1 of the writ application reads as under :-



“That the present writ application is being filed for issuance of writ of mandamus commanding the respondents to release the motorcycle being Reg. BR30V-4526 with the owner book in the name of Ram Kumar Sah the petitioner herein, which was seized in connection with C@-182 of 2019 dated 05/04/19 registered u/s 30(a) Bihar Prohibition and Excise Act 2016 or for grant of any other relief in the interest of justice, equity and good conscience.”

The prosecution case is that on the basis of secret information, a raid was conducted when from a bag kept on a motorcycle, 182.340 litres of Indian Made Foreign Liquor were recovered. The petitioner has been named in the present case on the basis of the document recovered from the motorcycle in question suggesting that the petitioner is the owner of the vehicle in question.

It is submitted by learned counsel for the petitioner that only on the basis of suspicion, the accusation has been levelled against the petitioner. In fact, from the motorcycle in question, no recovery has been made. The petitioner is the registered owner of the vehicle in question and a copy of the certificate of registration has been brought on record as Annexure-2. The motorcycle in question is rotting under the open sky. It is further submitted that the petitioner is ready to undertake that he will neither transfer the ownership of the vehicle in question, nor he will change the shape of the same and that he will produce the vehicle before the Court concerned



or concerned authority as and when required. It is further submitted that till date confiscation proceeding has not been initiated.

It appears that the writ application was registered on 10.12.2019 and thereafter, vide order dated 06.01.2020, on the request of Mr. Rewati Raman, learned AC to SC-11, the matter was adjourned for 21.01.2020 enabling him to seek instruction and to file counter affidavit. Thereafter, on similar request, the matter was adjourned on several occasions. Even today, when the matter was called out, Mr. Rewati Raman has submitted that despite several reminders, he has not been able to obtain any instruction as to whether the confiscation proceeding with regard to the vehicle in question has been initiated or not. However, he further submits that since the recovery has been made from the said motorcycle, hence, it is liable for confiscation.

Considering the fact that the seizure was made on 05.04.2019 and there is nothing on record to suggest that any report under Section 58(1) of the Act has been transmitted to the Collector, Sitamarhi by the seizing or the detaining authority or any confiscation proceeding has been initiated, hence, no useful purpose will be served in allowing the vehicle to rot under open



sky leading to a complete waste of public money. Keeping the vehicle in such condition and allowing it to reduced to a junk has been deprecated by the Supreme Court in the case of *Sunderbhai Ambalal Desai Vs. State of Gujrat* and other analogous cases (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.

Accordingly, we direct the provisional release of the Hero Glamour motorcycle bearing Registration No. BR30V4526, seized in connection with C2-182 of 2019 till the conclusion of the trial/confiscation proceeding, if any, to the satisfaction of the learned A.D.J.-cum-Special Judge (Excise), Sitamarhi/Collector-cum-District Magistrate, Sitamarhi, on the following conditions :-

(I) The petitioner will produce the proof of valid certificate of registration/ownership in his favour, including the insurance papers before the Court concerned.

(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.

It is made clear that the present order of provisional release of the vehicle in question will not be given effect to, if the final order has been passed in the confiscation proceeding.



The entire exercise of release will be done by the Special Judge/concerned authority 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 accusation or with regard to the ownership of the vehicle in question.

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

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

Ashwini/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

