

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.206 of 2020

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Yogendra Ray, S/o Ramsohavan Ray, R/o- Village- 10, Nakata Diyara P.O.
and P.S.- Digha, District- Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Excise, Bihar, Patna.
2. The Director General of Police, Bihar, Patna.
3. The District Magistrate, Patna.
4. The Superintendent of Police, Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sanjay Kumar Jha
For the Respondent/s : Mr.Kumar Manish (Sc5)

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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 : 31-01-2020

Heard Mr. Sanjay Kumar Jha, learned counsel for the petitioner and Mr. Prashant Kumar, learned A.C. to S.C. - 5 for the respondents.

The present writ application has been preferred for release of Auto Rickshaw (Tempu) APE PIAGGIO of the petitioner bearing Registration No. BR-01-PJ-1593, which has been seized in connection with Digha P.S. Case No. 598 of 2019, Spl. Case No. 9349 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 relief, as prayed for in paragraph No.2 of the writ application reads as follows :-

“2. (I) For issuance of an appropriate writ(s) /order(s)/direction(s) may be issued to the respondent(s) authority to release vehicle/Tempu-APE PIAGGIO bearing Registration No.BR-01-PJ1593, Chasis No.-MBX0003BFVL544480,Engine No.-S7K8772497, in favour of petitioner/the owner, which has been seized under Digha Police Station Case No.598/19, on dtd. 21.10.2019, SPL Case No.9349/2019, u/s 30(a) of Bihar Prohibition and Excise (Amendment) Act, 2018.”

The prosecution case got initiated on the basis of the written report of Assistant Sub-Inspector of Police submitted before the S.H.O., Digha P.S. to the effect that on 21.10.2019, at 12.00 Noon during patrolling and vehicle check, a tempo was intercepted and after seeing the police party, persons sitting in the tempo escaped from the scene. Though one person, Pawan Kuamr, was apprehended and from his possession, 71 bottles of Indian Made Foreign Liquor of 180 ml each, were recovered, leading to registration of Digha P.S. Case No. 598 of 2019.

It is submitted by learned counsel for the petitioner that the petitioner is the registered owner of the vehicle in question and a copy of certificate of registration has been brought on record as Annexure-2. It is further submitted that the petitioner was not



aware of the fact the liquor was being carried since the vehicle in question was being driven by Pawan Kumar, brother of the petitioner. It has further been submitted by the petitioner that he had purchased the said vehicle on finance through Bank and is unable to make payment of the monthly premium of the loan amount, if the vehicle is not released in his favour. It has further been submitted by the petitioner that no confiscation proceeding has been initiated and no notice has been received under Section 58(1) of the Act and the vehicle in question is rotting in the open sky.

Learned counsel for the respondents submits on relying upon the counter affidavit dated 27.01.2020 filed on behalf of the District Magistrate, Patna that till date no proposal / report under Section 58(1) has been transmitted to the District Magistrate, hence, no confiscation proceeding has been initiated. Statement to that effect has been made to para 7 of the counter affidavit which reads as follows :-

“7. That it is humbly submitted that the office of the S.S.P., Patna has not sent the confiscation proposal in the aforesaid matter.”

Section 58 (1) of the Act mandates that anything liable for confiscation under the Act, is seized or detained, the officer seizing and detaining such property shall without any reasonable



delay submit a report to the District Collector who has jurisdiction over the said area. But in the present case, it is an admitted position that proposal for confiscation under Section 58(1) of the Act has not been transmitted by seizing or detaining authority though the case was registered on 21.10.2019 and writ application was registered on 06.01.2020 whereas the matter was adjourned by this Court on 13.01.2020 to seek instructions and file counter affidavit and the vehicle in question is rotting in the open sky till date.

In the facts and circumstances of the present case, 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 to reduce it into a junk, would ultimately result into waste of public money has been deprecated by the 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.**

Accordingly, 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



Additional District and Sessions Judge-cum-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. 75,000/- but not in the form of bank guarantee or cash, with two sureties of the like amount to the satisfaction of the A.D.J.-cum-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.

The entire exercise will be done by the learned Court below 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 disposed of to the extent as indicated above.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

sanjeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.02.2020
Transmission Date	NA

