

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.195 of 2020

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Ram Nandan Kapar Son of Sri Ram Sevak Kapar Resident of M.H. No. 148
Sahasram Panchayat Barahi Ward No.05, Police Station- Barahi, District-
Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Excise Department, Govt. of Bihar, Patna.
2. The District Magistrate, Sitamarhi.
3. The Superintendent of Police, Sitamarhi.
4. The Excise Superintendent, Sitamarhi.
5. The S.I. Excise Department, Sitamarhi.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sunil Prasad Singh
For the Respondent/s : Mr. Vikash Kumar (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 : 16-01-2020

Heard learned counsel for the petitioner and learned
AC to SC-11 for the respondent-State.

The present writ application has been filed for
release of Honda CB Shine motorcycle of the petitioner, bearing
Registration No. BR30L5797, which was seized in connection
with Excise Case No. C2-410/2019, registered for the offence
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, as stipulated in



paragraph no.1 of the petition reads as follows:-

“1(i). For issuance of a writ in the nature of mandamus directing the respondents to forthwith release the motorcycle bearing registration No. BR30L-5797 taken into custody by Excise Department in connection with Excise Case No. C2-410/2019 in favour of its owner namely Ram Nandan Kapar (petitioner).

(ii) For issuance of any other appropriate writ(s) or order(s) or direction(s) which may be deemed fit and proper in the facts and circumstances of the case.”

The prosecution case is that from the motorcycle in question, 12 bottles of Nepali liquor were recovered, leading to registration of Excise Case No. C2-410/2019.

It is submitted by learned counsel for the petitioner that the petitioner claims to be the registered owner of the vehicle in question and certificate of registration has been brought on record as Annexure-1.

It appears that the present writ application was registered on 06.01.2020, whereas the final order dated 14.11.2019, has been passed by the Collector, Sitamarhi, in Confiscation Case No. 609/2019 a counter affidavit to that effect has been filed on behalf of respondent no.4, the Excise Superintendent, Sitamarhi, let it be kept on record.

However, learned counsel for the petitioner submits



that he has never received any notice with regard to initiation of confiscation proceeding, but agrees that since the final order has been passed in the confiscation proceeding, the present writ application may be disposed of with liberty to the petitioner to prefer an appeal before the competent authority.

As such, learned counsel for the respondent-State has also no objection to the disposal of the writ application giving liberty to the petitioner to prefer an appeal.

Considering the fact that the final order has been passed in the confiscation proceeding and the Act provides an alternative efficacious remedy of appeal by virtue of Section 92(2) of Chapter IX of the Act against the order passed by the Collector before the Excise Commissioner within ninety days of the order complained of, the present writ application is disposed of with a liberty to the petitioner to prefer appeal within a period of four weeks along with an application for condonation of delay. If such appeal is filed by the petitioner, the appellate authority is expected to consider application for condonation of delay in view of the fact that the writ application of the petitioner was pending before this Court and dispose of the appeal within a period of ten weeks from the date of its filing.

Needless to say, in case the vehicle in question has



not been auctioned sold till date, it will not be put on auction sale till the disposal of appeal before the appellate authority, if so filed.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

Amrendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	21.01.2020
Transmission Date	

