

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.389 of 2020

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Sanjay Kumar Singh, Son of Rajendra Prasad Singh, Resident of Village-
Bamhwar, Police Station- Piro, District- Bhojpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department,
Government of Bihar, Patna.
2. The District Magistrate, Bhojpur at Ara.
3. The Superintendent of Police, Bhojpur at Ara.
4. The Station Head Officer, Ara Nawada Police Station, District- Bhojpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anil Kumar
For the Respondent/s : Mr. Vivek Prasad (Gp7)

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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 : 04-02-2020

Heard Mr. Anil Kumar, learned counsel for the
petitioner and learned A.C. to G.P.-7 for the respondents.

The present writ application has been preferred for
release of Bolero Pickup Van bearing Registration No. BR-03K-
7916, which has been seized in connection with Agiaon Bazar P.S.
Case No.104 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.1 of the writ application reads as follows :-

“1. That this writ application is being filed for issuance of direction to the respondents authorities to release Bolero Pickup Van bearing registration no.BR-03K-7916, Chasis No.MA1ZN2GHKE3K50920, engine No.GHE4K9451 to release in favour of the petitioner which was seized by the police office of Agiaon Bazar police station, District-Bojpur in connection with Excise Case No.1399 of 2019 arising out of Agiaon Bazar P.S. Case No.104 of 2019, registered under Section 30(a) of Bihar Prohibition and Excise Act.”

The prosecution case got initiated on the basis of the written report submitted by Chakha Tope, S.I. of Police, submitted before the S.H.O., Agiaon Bazar P.S. which is to the effect that on 18.07.2019, during patrolling, a secret information was received that illicit liquor is being transported on a Bolero Jeep, whereupon, the vehicle in question was intercepted and 846 litres of Indian Made Foreign Liquor has been recovered, leading to registration of Agiaon Bazar P.S. Case No.104 of 2019,

It is submitted by learned counsel for the petitioner that the petitioner is the registered owner of the vehicle in question and certificate of registration has been brought on record as Annexure-2. It is further submitted that though Confiscation proceeding has not been initiated and the vehicle in question is rotting in the open sky. Petitioner is not named in the F.I.R., however, the owner of



the vehicle in question is made an accused. Petitioner is ready to produce the vehicle, as and when directed by the Court below.

Learned A.C. to G.P.-7 appearing on behalf of the State submits that the recovery is made from the vehicle in question and huge quantity of liquor is recovered, hence the vehicle in question is liable to be confiscated under Section 56(1) of the Act, however, it is submitted that the confiscation proceeding has not been initiated till date. Statement to that effect has been made in the counter affidavit dated 27.01.2020 filed on behalf of respondent No.2, District Magistrate, Bhojpur at Ara that neither the proposal / report has been received till date nor confiscation proceeding has been initiated. Paragraph No.13 of the counter affidavit reads as follows :-

“13. That with regards to averments made in paragraph 13 to 18 of the writ petition, it is submitted that the police has rightly and lawfully seized the vehicle in question and the same is liable for confiscation. It is submitted that confiscation proceeding for confiscation of the vehicle in question has not yet been initiated awaiting necessary papers and report from the police. But on this ground the petitioner cannot get release of the vehicle in question since the vehicle has been used for carrying incriminating article-illicit foreign liquor and thus the same is liable for confiscation. It is submitted that the vehicle in question has been kept in the safe custody of the police and there is no chance of it's deterioration as alleged by the petitioner.”



Section 58(1) of the Act mandates that anything which is liable for confiscation under the Act, is seized or detained, the officer seizing or detaining such property shall without any reasonable delay submit a report to the District Collector, but in the present case, though the seizure was made on 18.07.2019, FIR was registered on the same day but the report has not been submitted under Section 58(1), as gets reflected from the averment made in the counter affidavit. However, vide order dated 14.01.2020, the matter was adjourned till 27th January, 2020 in order to enable the respondent's counsel to seek instruction and for file of counter affidavit.

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. The commencement of trial is not likely to be commenced in future, keeping in view that more than 2 lakhs cases have already been registered under the Act. In such circumstances, we are restrained to direct for release of the vehicle 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), Bhojpur at Ara 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, Bhojpur at Ara 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 we have not expressed any opinion with regard to the merits of the accusation or with regard to the ownership of the vehicle in question, but it is expected from the learned Court below to conclude the release process within a week of receipt of the order.

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	24.02.2020
Transmission Date	NA

