

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.289 of 2020

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Ramji Paswan, Son of Dukha Paswan, Resident of Vill.- Vishanpur Kamdev,
P.S.- Suppi, Dist.- 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 S.H.O., Suppi PS, District- Sitamarhi.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Vikash Singh
For the Respondent/s : 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 : 05-02-2020

Heard Mr. Vikash Singh, learned Counsel for the petitioner and Mr. Rewati Kant Raman, learned Assistant Counsel to Standing Counsel No. 11 for the respondents.

The present writ application has been filed for release of auto-rickshaw (tempo), bearing Registration No. BR30P-9684, which has been seized in connection with Suppi Police Station Case No. 124 of 2019, registered for the offences punishable under Sections 272/273 of the Indian Penal Code and 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, stipulated in paragraph 1 of the writ application, reads as follow:-

“That the present writ application is being filed for issuance of writ of mandamus commanding the respondents to release the auto rickshaw bearing Registration No.-BR-30P-9684 with owner book in the name of Ramji Paswan, the petitioner herein, which was seized in connection with Suppi P.S. Case No. 124 of 2019 dated 27.05.2019 registered under section 272, 273 IPC and 30 (a) Bihar Prohibition and Excise Act 2016 and/or for grant of any other relief in the interest of justice equity and good conscience.”

The prosecution case got initiated on the basis of the written report of Trilokinath Ojha, Sub Inspector of Police, Suppi Police Station, submitted to the Station House Officer, Suppi Police Station, to the effect that on 27.05.2019, at 08:30 PM, an information was received that one person is carrying liquor in an autorickshaw. Subsequently, the vehicle in question was intercepted and from the vehicle, 27 litres of Nepali Souphi liquor was recovered, leading to the registration of Suppi Police Station Case No. 124 of 2019.



It is submitted by learned Counsel for the petitioner that the petitioner is the registered owner of the vehicle in question and the certificate of registration of the seized vehicle has been brought on record by way of Annexure-2 to the writ petition. The vehicle is rotting under the open sky. It is further submitted that confiscation proceedings has not been initiated. The petitioner is ready to produce the motorcycle in question as and when required by the Court concerned and undertake not to change the shape and nature of the motorcycle in question and also not to transfer or alienate the motorcycle in question.

Mr. Rewati Kant Raman, learned Assistant Counsel to Standing Counsel No. 11, submits that though the matter was adjourned on 13.01.2020 for seeking instruction and file counter affidavit, but in spite of his best efforts, no instruction has been received for filing of the counter affidavit. However, he has received information, through telephone, from the District Magistrate, Sitamarhi, that till date, the office of the District Magistrate, Sitamarhi, has not received any proposal for initiating confiscation proceeding. Hence, admittedly, the confiscation proceeding has not been initiated. The liquor was recovered from the vehicle in question and accordingly the same was liable to be confiscated under Section 56 (b) of the Act.



Keeping in view the fact that the First Information Report was registered on 27.05.2019 and about seven months have passed by and admittedly, confiscation proceeding has not been initiated, whereas in Section 58 (1) of the Act mandates the transmission of the report under Section 58(1) about anything which is liable to be confiscated under Section 56 (b) of the Act by the seizing or detaining authority without any reasonable delay.

In the circumstances in our view allowing the vehicle to turn into junk will be contrary to the ratio laid down by the Supreme Court, in the cases of **Sunderbhai Ambalal Desai Vs. State of Gujrat and other**, reported in (2002) 10 SCC 283 and **General Insurance Council and Ors. Vs. State of Andhara Pradesh and Ors.**, reported in (2010) 6 SCC 768.

However, it is admitted position that the confiscation proceeding has not been initiated moreover, more than two lakh cases have been registered in the State of Bihar, there is no likelihood of the trial being concluded in near future, we are constrained to direct that the vehicle in question be released provisionally till the conclusion of the trial, if any, to the satisfaction of learned Additional Sessions Judge-II -cum- Special Judge, Excise, Sitamarhi, or if the confiscation proceeding is



initiated in the mean while, to the satisfaction of Collector, 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;

(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 learned Additional Sessions Judge-II -cum- Special Judge, Excise, Sitamarhi;

(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 of release will be concluded by the learned Additional Sessions Judge-II -cum- Special Judge, Excise, Sitamarhi 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.)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	25-03-2020
Transmission Date	N/A

