

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.25799 of 2019**

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Amit Kumar Singh @ Amit Kumar, Son of Kamakhya Narayan Singh @ Kamakhya Singh, R/o Ashiyana Dighan Road, P.O. Keshari Nagar, P.S. Rajeev Nagar, Patna, Presently Residing at A.G. Colony, C.D.A. Colony, P.S. Shastri Nagar, District- Patna. ... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Excise and Prohibition Department, Bihar, Patna.
2. District Magistrate, Patna.
3. Superintendent of Police, Patna.
4. Station House Officer, Kotwali Police Station, District- Patna.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr.Ram Kumar Singh, Adv.  
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 : 07-01-2020**

Heard Mr. Ram Kumar Singh, learned counsel for the petitioner and Mr. Revati Kant Raman, learned A.C. to S.C.-11 for the respondent -State.

The present writ application has been filed for release of Royal Enfield, Classic 350 Silver BS IV Motorcycle of the petitioner bearing Registration number BR01DT/9247, seized in connection with Kotwali P.S. Case No. 867 of 2019, Special Case No.8601 of 2019, registered for the offences punishable under Section 279 of the Indian Penal Code and



Sections 37(b) and 37(c) of Bihar Prohibition and Excise (Amendment) Act, 2016, as amended by Amendment Act 8 of 2018 (hereinafter referred to as 'the Act'). The relief(s), as stipulated in paragraph no.1 of the petition, read(s) as follows:-

“That, this writ application is for release of the Royal Enfield, Classic 350 Silver BSIV, Motorcycle, bearing Registration No. BR01DT/9247, Chassis No.-ME3U3S5C1HG960217, Engine No.-U3S5C1HG119851 which has been seized by the Police in Kotwali P.S. Case No.867 of 2019/Special Case No.8601 of 2019 registered for offence punishable under Section 279 I.P.C. and of 37 (b) (c) of Bihar Prohibition and Excise Act 2016.”

The prosecution case got initiated on the basis of written report of one Vijay Prasad Singh, A.S.I., Kotwali Police Station, Patna submitted before the Inspector-cum-S.H.O., Kotwali Police Station to the effect that on 24.08.2019 at 10.00 P.M. during patrolling, the informant received information that a person is creating nuisance in drunken condition near station roundabout, when the informant along with other police personnel reached there, he found a person creating nuisance and he was apprehended by the informant and other police personnel. The apprehended accused disclosed his name as Gunjan Kumar and he was found consuming 76 mg/100 ml alcohol which was confirmed by conducting breath analyzer test. During that course, another accused was found driving a



Bullet motorcycle rashly and negligently from G.P.O. roundabout to Station roundabout, but was apprehended by the police. On being asked he disclosed his name as Saurav Kumar and he was found consuming 53 mg/100 ml alcohol which was confirmed by conducting breath analyzer test. Subsequently, one more person was also found creating nuisance near station roundabout tempo stand and was also apprehended who disclosed his name as Rakesh Kumar, he was found consuming 169 mg/100 ml alcohol. It is further alleged that at about 4.05 P.M. near Ashok Cinema Hall, an accused was found coming on a Bullet motorcycle driving it rashly and negligently from G.P.O. roundabout, who was apprehended and his bullet motorcycle was seized by the police and the apprehended accused disclosed his name as Amit Kumar Singh, i.e., the petitioner. In breath analyzer test, he was found consuming 85 mg/100 ml alcohol, leading to registration of Kotwali P.S. Case No. 867 of 2019/Special Case No. 8601 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 vehicle in question has been brought on record as Annexure-2. This is an admitted position that no recovery of liquor or intoxicant was



made from the vehicle in question. The seized vehicle is rotting under the open sky. It is further submitted that since there is no recovery and the vehicle was not being used for carrying liquor or intoxicant, hence it is not liable for confiscation under the provisions of Section 56 of the Act.

It is further submitted that no confiscation proceeding has been initiated till date, statement to that effect has been made in paragraph No.6 of the petition, which reads as under :-

“That, for the seized vehicle no confiscation proceeding has been started by the Collector, Patna till date.”

Learned counsel for the respondents submits that this is an admitted position that neither any intoxicant nor liquor has been seized from the vehicle in question nor the same was being used for carrying any such prohibited article. Hence, *prima facie*, it is not liable for confiscation. Hence, learned counsel for the respondents has no objection with regard to the provisional release of the vehicle in question.

However, learned counsel for the respondent does not have any instruction with regard to the initiation of confiscation proceeding. Even if the authority choose to initiate such proceeding then they have to comply the mandatory



direction given in the case of *Diwakar Kumar Singh Vs. The State of Bihar and Ors.*, reported in 2018 (3) PLJR 403, wherein it has been held that it shall be mandatory for the confiscating authority, before passing an order on confiscation proceeding when the person is found in drunken condition and no liquor is seized from the vehicle nor the vehicle is used for transportation of the liquor, to decide it as a preliminary issue whether in such a condition, the vehicle would be liable for confiscation under Section 56 of the Act. A copy of the said order was to be communicated to all the District Magistrates of the State through the office of the Advocate General.

Considering rival submissions of the parties, there is no dispute that there is any recovery of liquor or intoxicant from the vehicle in question or the vehicle in question was found used carrying liquor, though the case has been lodged under Section 279 of the Indian Penal Code and Sections 37(b) and 37(c) of Act, 2016. Section 279 of the Indian Penal Code stipulates rash driving or riding on a public way whereas Sections 37 (b) and (c) of the Act prescribes for penalty for consumption of liquor, if any person is found drunk or in a state of drunkenness at any place; or drinks and creates nuisance or violence at any place including in his own house or premises,



which reads as under :-

“37. Penalty for consumption of liquor.—Whoever, in contravention of this Act or the rules, notification or order made there under -  
(b) is found drunk or in a state of drunkenness at any place; or  
(c) drinks and creates nuisance or violence at any place including in his own house or premises; or”

Having heard learned counsels for the parties, we are of the opinion that Section 56 of the Act provides the conditions in which anything can be liable for confiscation.

Section 56 of the Act reads as follows:-

“56. Things liable for confiscation.-  
Whenever an offence has been committed, which is punishable under this Act, following things shall be liable to confiscation, namely-

(a) any intoxicant, liquor, material, still, utensil, implement, apparatus in respect of or by means of which such offence has been committed;

(b) any intoxicant or liquor unlawfully imported, transported, manufactured, sold or brought along with or in addition to, any intoxicant, liable to confiscation under clause(a);

(c) any receptacle, package, or covering in which anything liable to confiscation under clause (a) or clause(b), is found, and the other contents, if any, of such receptacle, package or covering;

(d) any animal, vehicle, vessel or other conveyance used for carrying the same.

(e) any premises or part thereof that may



have been used for storing or manufacturing any liquor or intoxicant or for committing any other offence under this Act.”

Section 56(d) of the Act is relevant, which suggests that any animal, vehicle, vessel or other conveyance used for carrying the intoxicant is liable for confiscation.

This is admitted fact that there was no recovery of liquor or intoxicant from the vehicle in question. This is also not a case that the liquor was being carried through the vehicle in question. This is an admitted position that the confiscation proceeding has not been initiated. In the circumstances, prima facie, it appears that under Section 56 of the Act, the seized vehicle is not liable for confiscation, as it has not been used for carrying liquor.

Since there is a bar under Section 60 of the Act for any court to pass any order with regard to the seized vehicle, the Special Judge has no jurisdiction to release the vehicle. However, this bar under Section 60 of the Act will not apply in exercise of the jurisdiction under Article 226 of the Constitution of India. Hence, in such a circumstance, the case comes within one of the exceptions where the discretionary jurisdiction under Article 226 of the Constitution of Indian can be exercised for releasing the vehicle seized, as has been held in the case of



Whirlpool Corporation Vs. Registrar of Trade Marks, Mumbai and Ors., reported in (1998) 8 Supreme Court Cases 1.

Paragraph 15 reads as follows:-

“15. Under Article 226 of the Constitution, the High Court, having regard to the facts of the case, has a discretion to entertain or not to entertain a writ petition. But the High Court has imposed upon itself certain restrictions one of which is that if an effective and efficacious remedy is available, the Court would not normally exercise its jurisdiction. But the alternative remedy has been consistently held by this Court not to operate as a bare in at least three contingencies, namely, where the Writ Petition has been filed for the enforcement of any of the Fundamental rights or where there has been a violation of the principle of natural justice or where the order or proceedings are wholly without jurisdiction or the vires of an Act is challenged. There is a plethora of case law on this point but to cut down this circle of forensic whirlpool, we would rely on some old decisions of the evolutionary era of the constitutional law as they still hold the field.”

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 rot will be ultimately resulting into waste of public money, which 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. (2010) 6 Supreme Court Cases 768.

In the present case, the First Information Report was registered on 25.09.2019 and the writ petition was registered on 21.12.2019, but there is nothing on record to suggest that confiscation proceeding has been initiated or not. Moreover, learned counsel for the respondents has no objection to the provisional release of the vehicle. Hence we direct that the same be released provisionally till conclusion of the trial or conclusion of confiscation proceeding, if any, on the following conditions:

(I) The petitioner will produce the proof of valid certificate of registration/ownership in his favour including the insurance papers of the vehicle in question before the learned A.D.J.-cum-Special Judge (Excise), Patna;

(II) The petitioner will furnish bank guarantee of rupees fifty thousand, 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.

The entire exercise will be done by the learned Special Judge, Patna 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 allowed to the extent as indicated above.

**(Dinesh Kumar Singh, J)**

**( Anil Kumar Sinha, J)**

Ashwini/-

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