

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.174 of 2020

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Krishna Singh Yadav, son of Chirkut Yadav @ Daya Shankar Singh, Resident of village- Bahuwara, P.S. Rohtas, District- Rohtas at Sasaram. At present Resident of village- Asrari, P.S.- Sonhan, District Kaimur at Bhabua.

... .. Petitioner/s

Versus

1. The State of Bihar through Secretary of the Excise Department, Bihar at Patna.
2. The Collector cum District Magistrate, Kaimur at Bhabua.
3. The Superintendent of Police, Kaimur at Bhabua.
4. The Officer in-charge of Police Station, Mohania, District- Kaimur at Bhabua.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Rajani Kant Pandey
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 : 03-02-2020

On the earlier occasion, vide order dated 13.01.2020, learned counsel for the petitioner was permitted to make necessary correction in paragraph no.1 of the writ petition. Today, at the very outset, learned counsel for the petitioner is permitted to make necessary correction in para-1 of the writ application.

Heard Mr. Rajnikant Pandey, learned counsel for the petitioner and learned A.C. to G.P.-7 appearing on behalf of the respondents.



The present writ application has been filed for release of vehicle bearing Registration No.BR24P/8329 in favour of the petitioner, which has been seized in connection with Official Complaint (Excise Department) Case No.R-287 of 2019, P.R. No.4 of 2019-20 registered of the offences punishable under Section 30(a) of the Bihar Prohibition and Excise Act, 2016, as amended by the 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. (i) To issue an appropriate writ, order or directions including a writ in the nature of mandamus commanding the respondents to release the vehicle of the petitioner which has been seized in connection with Official Complaint (Excise Department) as R. 287 of 2019, P.R. No.4 of 2019-20 as Tempo bearing its BR 24P/8329 which is belonging to the petitioner during pendency of the finalization of the confiscation proceedings before the learned District Magistrate, Kaimur at Bhabua or pendency of the criminal case before the trial Court.

(ii) To issue an appropriate writ/ order/ direction directing the respondents not to take any coercive measures against the petitioner.

From the vehicle in question, 90 litres of country-made liquor were recovered.

It is submitted by learned counsel for the petitioner that the passenger traveling in the vehicle in question was carrying the



liquor and petitioner had no knowledge of the same, hence the petitioner cannot be held responsible for transporting the liquor. Hence, presumption of innocence under Section 32 of the Act is also in favour of the petitioner. It is further 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 of the writ application. It is further submitted that the case was registered on 23.04.2019, writ application was filed on 06.01.2020 and on the prayer of learned counsel for the State, the matter was adjourned till 27th January, 2010, in order to enable him to seek instructions and filing of counter affidavit and thereafter, the confiscation proceeding has been initiated by the respondent authorities.

There is no doubt that the prosecution case was lodged on 23.04.2019 by filing complaint before the Special Judge, Excise, Kaimur.

Relying upon the counter affidavit filed on behalf of the respondent No.2, learned counsel for the State submits that the confiscation proceeding with regard to the vehicle in question has been initiated, being Confiscation Case No.30 of 2020 and the same is pending before Respondent No.02, the Collector-cum-District Magistrate, Kaimur at Bhabhua. In such circumstances,



learned counsel for the respondent-State has no objection, if the writ application is disposed of directing the concerned respondents to conclude the confiscation proceeding within a time frame, if the same has not been concluded as yet.

Considering the fact that once the confiscation proceeding is initiated, the exercise of discretionary jurisdiction under Article 226 of the Constitution of India, having self imposed restriction can be exercised in exceptional or a monstrous situation, such as when fundamental rights have been violated, the impugned order or the proceedings are wholly without jurisdiction or where the principle of natural justice has been grossly violated or vires of the Act is under challenge. Considering the view taken by the Apex Court in the case of **State of Karnataka Vs. K. Krishnan (2000) 7 Supreme Court Cases 80** and in the case of **State of West Bengal and Ors. Vs. Sujit Kumar Rana, (2004) 4 Supreme Court Cases 129** and considering the ratio laid down by the Full Bench of this Court in the case of **Baleshwar Roy Vs. The State of Bihar and Ors , 2018(4) PLJR 970**, we are not inclined to pass order for release of the vehicle for the present.

Since vehicle in question was seized on 23.04.2019 and the confiscation proceeding has been initiated vide order dated 21.01.2020 fixing the date of hearing of the aforesaid confiscation



case on 06.02.2020 and notices have been issued to the petitioner in confiscation case No.30 of 2020 on 29.01.2020, the same suggests the callous manner in which the quasi-judicial proceeding is being conducted.

In view of the discussion made above, respondent No.2 is expected to conclude the proceeding of Confiscation Case No.30 of 2020, within a period of six weeks of receipt or production of the order in accordance with law.

The petitioner is also expected to appear regularly and participate in the confiscation proceeding.

Accordingly, with the above observation and direction, the present writ application is disposed of.

The office is directed to communicate this order to the District Magistrate, Kaimur at Bhabhua for its strict compliance.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

sanjeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	07.02.2020
Transmission Date	NA

