

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.575 of 2020

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Santosh Kumar, S/o Shiv Pujan Bind, Resident of Village- Mali, P.S.- Karpi,
District- Arwal

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Excise Department, Bihar, Patna.
2. The District Magistrate, Aurangabad,
3. The Senior Superintendent of Police, Aurangabad.
4. The Excise Officer, Aurangabad Sadar, District- Aurangabad.
5. The Officer Incharge, Upahara, District- Aurangabad

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ranjit Kumar, Advocate
For the Respondent/s : Mr.Vivek Prasad ,GP-7
Mrs. Manisha Singh, AC to GP-7

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
and
HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

2 14-01-2020 Heard Mr. Ranjit Kumar, learned counsel for the

petitioner and Mrs. Manisha Singh, learned AC to GP-7 for the

respondent-State.

The present writ application has been filed for release
of Hero Splendor motorcycle bearing Registration No. BR-
02AF-6814, in favour of petitioner, which has been seized in
Upahara P.S. Case No. 43 of 2018 registered for the offences



punishable under Sections 30(a) and 37(b)(c) of 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 by the petitioner as stipulated in paragraph no.1 of the writ application reads as follows :-

“That this application is being filed for issuance of an appropriate writ/writs/direction(s) to the respondents for release of vehicle of the petitioner which is Hero Splendor bearing registration no. BR-02AF-6814, Chasis No. MBLHA10C-AGHF25548, and Engine No. HA10EYGHF-30385 in his favour, which has been seized in connection with Uphara P.S. Case No. 43/018 on 15.10.018 at Teyap More in Goh Upahara Road in police Station Upahara in the District of Gaya instituted for the offences punishable under section 30(a) of Bihar Prohibition and Excise Act, 2016 and for which the confiscation proceeding has been initiated against the said vehicle by the court of learned the District Magistrate, Aurangabad vide Excise Case No. 310/2019 dated 9.7.19 and confliction



proceeding has approved against the vehicle of the petitioner but final order did not passed till date by the concern authority.

And/Or for any other appropriate relief (s) to the petitioner for which he may be found entitled to in the eye of law.”

The prosecution case got initiated on the basis of written report of Kamta Prasad Singh, A.S.I. of Uphara police Station submitted to Station House Officer is to the effect that that on 15.10.2018 at 6.15 P.M. during vehicle checking, two persons were apprehended on chase, who disclosed their name as Santosh Kumar, the petitioner and Rakesh Kumar. On demand no documents with regard to the motorcycle were produced, however, from the motorcycle, 750 ml of Indian Made Foreign Liquor was recovered. Thereafter, the petitioner and co-accused Rakesh Kumar were put to breath analysis test, which was found postive, leading to registration of Uphara P.S. Case No. 43 of 2018.

Learned counsel for the petitioner confines his prayer only for direction for expeditious conclusion of the confiscation proceeding, since the Confiscation (Excise) Case No. 310/2019 has been initiated, pursuant to the seizure being made on



15.10.2018 and the seizing detaining authority submitted the report for confiscation of the same on 18.07.2019, i.e., after nine months of the seizure. The notice has been issued to the petitioner vide order dated 09.07.2019 but till date the same has not been concluded.

Mrs. Manisha Singh, learned AC to GP-7 appearing for the respondents submits that she has no objection in disposal of the writ application with a direction to District Magistrate, Aurangabad to conclude the confiscation proceeding within a time frame.

Considering the joint prayer of the parties and the fact that the seizure was made on 15.10.2018 and the seizing detaining authority submitted the report for confiscation of the same on 18.07.2019, i.e., after nine months of the seizure and the vehicle was seized by Assistant Sub-Inspector of Police, which is contrary to the provisions contemplated under Section 73(e) of the Act, which authorizes the police officer not below the rank of Sub-Inspector to make seizure, it is expected from Respondent No. 2, District Magistrate, Aurangabad to conclude the confiscation proceeding being Confiscation (Excise) Case No. 310/2019, arising out of Uphara P.S. Case No. 43 of 2018 within a period of six weeks from the date of



receipt/production of a copy of this order in accordance with law after giving due opportunity of hearing to all affected persons.

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.

Let a copy of this order be transmitted to the District Magistrate, Aurangabad.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

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