

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.53 of 2020

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Ambuj Kumar, Son of Sri Sanjay Kumar @ Sanjay Sharma, Resident of Village- Adhwan, Police Station- Wazirganj and District- Gaya. At present resident of Mohalla- Lakhibagh, Police Station- Muffasil and District- Gaya.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
2. The District Magistrate-cum-Collector, Gaya.
3. The Senior Superintendent of Police, Gaya.
4. The Excise Superintendent, Gaya.
5. The A.S.I., Excise Department, Dobhi Circle, District- Gaya.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Gajendra Kumar Singh
For the Respondent/s : Mr.Vivek Prasad, G.P. 7

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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

Heard Mr. Gajendra Kumar Singh, learned Counsel for the petitioner and Mr. Vivek Prasad, learned G.P. 7 for the respondents.

The present writ application has been filed for release of Auto Rickshaw (Tempo), bearing Registration No. BR02AA-7074, which has been seized in connection with Excise Case No. 99 of 2019, registered for the offences punishable under Sections 30(a)



and 56(d) of the Bihar Prohibition and Excise Act, 2016, as amended by Amendment Act 8 of 2018 (hereinafter referred to as 'the Act').

The prosecution case got initiated with the prosecution report of Ruby Kumari, Excise Inspector, Gaya, submitted to the Special Judge, Excise, Gaya, to the effect that on 26.02.2019, at 01:20 PM, a tempo was intercepted and on search being made, 36 litres of Indian Made Foreign Liquor was recovered from the said tempo, leading to the registration of Excise Case No. 99 of 2019.

It is submitted by learned Counsel for the petitioner that the petitioner is the registered owner of the vehicle in question. A registration certificate of the seized vehicle has been brought on record, as Annexure-2.

A counter affidavit, dated 27.01.2020 has been filed on behalf of respondents no.2-5, stipulating at paragraph no. 8 therein with respect to the vehicle in question, that confiscation proceeding being Confiscation Case No. 14 of 2020 has already been initiated, which reads as under :-

“8. That on receipt of the relevant papers and recommendation of the Assistant Excise Commissioner, Gaya, the matter was duly scrutinized by the District Magistrate, Gaya and being satisfied that an offence has been committed and the vehicle in question is liable for confiscation in terms of the



relevant provision of the Prohibition Act, a confiscation proceeding being Excise Confiscation Case No. 14/2020 was initiated in the Court of the District Magistrate, Gaya in respect of the vehicle in question. District Magistrate Gaya vide order dated 10.01.2020 pleased to order issue a notice to the petitioner for placing his case in the said confiscation case. Pursuant to the aforesaid order of the District Magistrate, Gaya, a registered notice was issued to the petitioner for appearance and placing his case on 28.01.2020.”

It is submitted by learned GP-7 that proceeding of the said confiscation case will be concluded within a time frame.

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 restrictions can be exercised only in exceptional or in a monstrous situation. Considering the view taken by the Apex Court in the case of **State of Karnataka Vs. K. Krishnan**, reported in (2000) 7 SCC 80 and in the case of **State of West Bengal and Ors. Vs. Sujit Kumar Rana**, reported in (2004) 4 SCC 129, a Full Bench of this Court in the case of **Baleshwar Roy Vs. The State of Bihar and Ors.**, reported in 2018 (4) PLJR 970, held as follows:

“62. It may, however, be added that Article 226 of the Constitution of India provides



power to the High Court to issue writs to any person or authority, including in appropriate cases, any Government, any order or writs (including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part-III and for any other purpose). Similarly Article 227 of the Constitution of India provides the power of superintendence over all Courts and Tribunals throughout the territories in relation to which any High Court exercises its jurisdiction. The powers of the High Court under Articles 226 and 227 of the Constitution of India cannot be curtailed under any circumstance, as the power flows from the Constitution itself. No statutory bar can affect the power of the High Court under Articles 226 and 227 of the Constitution of India.

63. Despite such wide and untrammelled powers, without any circumscription by external restrictions, the Courts have evolved certain self-imposed limits while exercising these powers. The High Courts, normally, would not go beyond justified inhibitions under any Statute except where there is a complete jettisoning of rule of law or under exceptional circumstances which demand timely judicial interdict. This inhibition is basically ordained, keeping in mind that there is a national weal behind any valid piece of Legislation incorporating and inhering in itself the social objective behind any Legislation. Though, no



limitations or fetters have been put on the powers of the High Court under Articles 226 and 227 of the Constitution of India, as the High Courts perform as sentinel on the qui-vive, but such power is not to be exercised casually and without coming to the conclusion that non-exercise of such power would lead to positive injustice. Times without number, it has been held by the High Courts that only under condition of a person establishing that substantial injustice has or is likely to ensue, such extraordinary powers can be exercised. It needs no adumbration by this date that the plenary powers of the High Court have only to be exercised in the interest of justice.

64. Thus, an order of release may be passed under Article 226/227 of the Constitution of India, even pending confiscation proceedings, but only when it is established before the Court that the procedure prescribed and the law in that regard has been completely flouted and that there is complete violation of the procedure prescribed for confiscation, viz., notice to the offender before confiscation, allowing him opportunity of giving written representation and affording hearing on the issue to him and that such injustice cannot be remedied without the exercise of the extraordinary power.

65. Needless to state that under Article 226 of the Constitution of India, the Court will not go into the disputed question of facts.



66. Thus, the powers directing for release of the vehicles or goods, during the pendency of the confiscation, can only be sparingly exercised under monstrous situations and circumstances when injustice occurs because of non-fulfillment of the conditions for confiscation.”

Since the vehicle in question was seized on 26.02.2019, it is expected that the Respondent No. 2, the District Magistrate-cum-Collector, Gaya, shall conclude the proceeding of Confiscation Case No. 14 of 2020 within a period of six weeks from the date of receipt/production of a copy of this 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.

Let a copy of this order be communicated to the Collector, Gaya, through fax/email, immediately.

(Dinesh Kumar Singh, J.)

(Anil Kumar Sinha, J.)

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AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	14-02-2020
Transmission Date	N/A

