

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.215 of 2020

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Mintu Kumar Son of Late Raj Kumar Sah Resident of Village- Khesrahi,
Police Station- Patepur in the District of Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Department of Excise, Government of Bihar, Patna.
2. The Principal Secretary, Excise Department, Government of Bihar, Patna.
3. The District Magistrate-cum- Collector Vaishali at Hajipur.
4. The Superintendent of Police Vaishali at Hajipur.
5. The Officer-in- Charge Desari (Chandpura O.P.) P.S. in the district of Vaishali.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ranjeet Kumar
For the Respondent/s : Mr.Kumar Manish (SC5)

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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. Sunil Kumar, learned counsel for the petitioner and Mr. Kumar Manish, learned S.C. - 5 appearing for the respondents.

The present writ application has been preferred for release of Hero Honda Splendor motorcycle bearing Registration No. BR-31AE-5199, which has been seized in connection with Desari P.S. Case No. 68 of 2019, registered for the offence punishable under 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 in paragraph No.1 of the writ application reads as follows :-

“1. (I) To direct the respondents to release the Motorcycle of the petitioner bearing Reg. No.BR31AE-5199 in favour of the petitioner which has been seized in connection with Desari P.S. Case No.68 of 2019 registered for the offence punishable under Sections 30(a) Bihar Prohibition and Excise Act, 2016.

(II) Also for any other relief/ reliefs for which the petitioner is found to be entitled in the eye of law.”

The prosecution case got initiated on the basis of the written report submitted by Mr. Naveen Kumar Singh, A.S.I. of Police, submitted before the S.H.O., Desari P.S. is to the effect that on 12.03.2019, during patrolling, one motorcycle was intercepted and from the possession thereof, one bottle of 180 ml of Indian Made Foreign Liquor was recovered and the vehicle was seized, leading to registration of Desari P.S. Case No. 68 of 2019.

It is submitted by learned counsel for the petitioner that the petitioner is the registered owner of the vehicle in question and certificate of registration of the same has been brought on record, as Annexure-1 to the writ application. It is further submitted that the petitioner is ready to produce the vehicle in question as and when directed by the Court below and is ready to undertake that he will not change or transfer the vehicle in question during confiscation proceeding and the vehicle in question is rotting under the open sky.



Mr. Kumar Manish, learned counsel for the State submits that he has received instruction from the office of the Collector-cum-District Magistrate, Vaishali that the District Magistrate has not received any proposal or report under Section 58(1) of the Act for initiation of confiscation proceeding in regard to the vehicle of the petitioner. Hence, the confiscation proceeding has not been initiated.

Considering the rival submissions of the parties, it appears that the FIR was registered on 12.03.2019, the writ application was registered on 06.01.2020 and the matter was heard on 13.01.2020 by this Court and on the prayer of learned counsel for the State, this Court adjourned the matter for 27th January, 2020 to seek instruction and file counter affidavit, but the counter affidavit has not been filed as yet.

Admittedly, in the present case, seizure has been made by Assistant Sub Inspector of Police whereas, Section 73(e) of the Act stipulates that the seizure cannot be made by an officer below the rank of Sub Inspector of Police. Hence, the very seizure appears to be de hors the provisions of the Act.

In the facts and circumstances of the case, since the confiscation proceeding has not been initiated till date, no useful purpose will be served in allowing the vehicle in question to rot



under the open sky leading to a complete wastage of public money. Keeping the vehicle in such condition and allowing to reduce it into a junk, would ultimately result into wastage 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 reported in **(2002) 10 SCC 283** and in the case of **General Insurance Council and Ors. Vs. State of Andhara Pradesh and Ors.** reported in **(2010) 6 Supreme Court Cases 768.**

Accordingly, we direct for provisional release of Hero Honda Splendor Motorcycle bearing Registration No.BR-31AE-5199 till the conclusion of the trial or till the conclusion of confiscation proceeding, if any, to the satisfaction of learned Additional District and Sessions Judge-cum-Special Judge (Excise), Vaishali 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 A.D.J.-cum-



Special Judge, Excise, Vaishali 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.



It is expected that the entire exercise will be done by the learned Court below 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 the accusation or with regard to the ownership of the vehicle in question, but it is expected from the Collector-cum-District Magistrate, Vaishali to conclude the confiscation proceeding within a period of six weeks, in view of the discussions made above and as per the provisions of the Act.

Accordingly, the writ application is disposed of to the extent as indicated above.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

sanjeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03.03.2020
Transmission Date	NA

