

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5 of 2020

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Sunil Ram Son of Mani Ram Resident of Mahadev Nagar, Sheikhpura, P.S.
Sheikhpura, District Sheikhpura.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Excise, Government of Bihar, Patna.
2. The Principal Secretary, Department of Excise, Government of Bihar, Patna.
3. The District Magistrate, Sheikhpura.
4. The Superintendent of Police, Sheikhpura.
5. The District Transport Officer, Sheikhpura.
6. The Officer-in- Charge, Sheikhpura, District Sheikhpura (Bihar).

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Lalan Kumar, Adv.
For the Respondent/s : Mr. Kumar Manish, SC-5

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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 : 04-02-2020

Heard learned counsel for the petitioner and
learned SC-5 for the respondents.

The present Writ Application has been filed for
release of Scorpio vehicle in favour of the petitioner, bearing
Registration No. BR-31AG-7255, seized in connection with
Sheikhpura P.S. Case No.371 of 2019, registered for the offence
punishable under Section 30(a) of the Bihar Prohibition and
Excise Act, 2016, as amended by the Amendment Act of 2018.
The prayer as stipulated in paragraph No.1 of the writ
application, reads as under :-



“That this writ petition is being filed for issuance of a direction to the respondent No. 3 the District Magistrate, Sheikhpura to release the vehicle white Scorpio (Four wheeler) bearing Registration No. JH-01AA-9431, Engine No. GC94F13333, Chassis No. MA1TA2GCK92F41786 which has been seized in connection with Sheikhpura P.S. Case No. 371 of 2019 dated 20.08.2019 under Section 30(a) of the Bihar Prohibition and Excise Act, 2016 and no confiscation proceeding has been pending before the Collector, Sheikhpura.”

The prosecution case got initiated on the basis of self-statement of Chandan Kumar, Inspector -cum -S.H.O, Sheikhpura Police Station, recorded on 20.08.2019 at 5.45 A.M. to the effect that on 20.08.2019, in the night, he received a secret information about transportation of illicit liquor and consequently, he along with the other police officials proceeded, when six persons were apprehended, but three managed to escaped from the scene. Subsequently, during frisking, from an Scorpio vehicle which was found parked at the spot, total 45 litres of Indian Made Foreign Liquor were recovered, whereas,



from the other vehicles parked there, altogether 630 litres of Indian Made Foreign Liquor were recovered, leading to registration of Sheikhpura P.S. Case No. 371 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. The petitioner is not named in the FIR nor he has been apprehended from the place of seizure, hence, his innocence ought to be presumed. It is further submitted that till date, no confiscation proceeding has been initiated, statement to that effect has been made in paragraph No.8 of the petition, which reads as under :-

“That no requisition was given to the Collector for confiscating the aforementioned vehicle of the petitioner and till today confiscation proceeding is pending before the Collector, Sheikhpura.”

It is submitted by learned counsel for the respondents that he has not received any instruction for filing counter affidavit. Though the matter was heard and vide order dated 13.01.2020, the matter was adjourned for 27.01.2020 and thereafter again on 29.01.2020, it was adjourned for 03.02.2020 enabling him to file counter affidavit. However, he has received



message through WhatsApp from the office of the District Magistrate to the effect that the Superintendent of Police has issued a show cause notice to the Officer I/c of Sheikhpura Police Station for not transmitting the report under Section 58(1) of the Act for initiation of confiscation proceeding and the proposal is likely to be transmitted to the District Magistrate by today itself. It is further submitted that admittedly, the liquor was being transported through the vehicle in question, hence, it is liable for confiscation under Section 56(b) of the Act.

Having heard learned counsels for the parties and considering their rival submissions, it is not in dispute that the liquor was recovered from the vehicle in question, the FIR was registered on 20.08.2019, but till date, confiscation proceeding has not been initiated, whereas Section 58(1) of the Act mandates for transmission of report by the seizing or the detaining authority without any reasonable delay for a thing which is liable for confiscation, but the same has not been transmitted till date.

In the facts and circumstances of the present case, no useful purpose will be served in allowing the vehicle to rot under open sky only for the purpose of material exhibit, leading to a complete waste of public money. Keeping the vehicle in



such condition and allowing it to rot will ultimately reduced to a junk 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.* reported in (2010) 6 Supreme Court Cases 768.

Since the writ application was registered on 04.01.2020 and the matter was heard on 13.01.2020 and 29.01.2020 and thereafter, it was adjourned on last two occasions and despite of that, the counter affidavit has not been filed by the respondent authorities, we direct that the vehicle in question be released provisionally, till conclusion of the trial or till conclusion of confiscation proceeding, if initiated in the meantime, to the satisfaction of the learned A.D.J.-cum-Special Judge (Excise) or the Collector, Sheikhpura, on the following conditions :-

(I) The petitioner will produce the proof of valid certificate of registration/ownership in his favour including the insurance papers before the learned ADJ-cum-Special Judge (Excise), Sheikhpura;

(II) The petitioner will furnish surety bond of Rs.2,00,000/- but not in the form of bank guarantee or cash,



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 Special Judge 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/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

