

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.49 of 2020

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Sujeet Kumar @ Sujit Kumar Son of Shiv Prasad @ Shiv Prasad Laldeo
Village Bathwara, P.S.- Gayaghat, District- Muzaffarpur Petitioner/s
Versus

1. The State of Bihar Bihar.
 2. The Principal Secretary Excise and Registration Department Bihar, Patna.
 3. The District Magistrate Patna.
 4. The Senior Superintendent of Police Patna.
 5. The Officer-in- Charge Fulwarisharif Police Station, Patna.
 6. The Investigating Officer Fulwarisharif Police Station, Patna.
- Respondent/s

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Appearance :

For the Petitioner/s : Ms.Kumari Sujata Sinha
For the Respondent/s : Mr.Rewati Kant Raman, AC to SC 11

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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 learned counsels for the parties.

The present writ application has been preferred for release of Hero Glamour motorcycle of the petitioner bearing Registration No. BR07AJ-8837, which has been seized in connection with Phulwarisharif P.S. Case No. 964 of 2019, registered for the offences under Sections 30(a), 37(b) and 37(c) of the Bihar Prohibition and Excise Act, 2016, as amended by Amendment Act 8 of 2018,(hereinafter referred to as 'the Act'). The prayer as is contained in paragraph no.1 of the writ application, reads as follows:-



“1. For issuance of an appropriate writ/writs, order/orders or direction to release the motorcycle bearing Registration No. BR07AJ-8837, Engine No. JA06ERKGGO2436 and Chasis No. MBLJAW104KGG-02786 which has been seized in connection with Phulwarisharif P.S. Case no. 964/19 dated 22.10.2019 which was registered for an offence u/s 30(a)/37(b)/37(c) of Bihar Prohibition and Excise Act, 2016.

II. For issuance of an appropriate writ/writs, order/orders, direction/directions to the respondents to accept the security given by the petitioner at the time of release of the motorcycle of directed by the Hon’ble Court at the time of release of the Motorcycle bearing Registration No. BR07AJ-8837.”

The prosecution case, as per the written report of Rameshwar Paswan, being the S.I., submitted to S.H.O., Phulwarisharif Police Station, is to the effect that on 22.10.2019, at about 7.50 PM, on the information that some persons were creating nuisance in intoxicated conditions, intercepted two motorcycles on which, six persons, namely, Pramod Kumar, Sujit Kumar (the petitioner), Nitish Mahto, Md. Sheru, Nishant Singh and Shashiraj Tiwari were found sitting in intoxicated condition and subsequently, they were put to breath analyzer test which was found positive. From the motorcycle of the petitioner, i.e., Sujit



Kumar, 0.375 ml of Indian Made Foreign Liquor was also recovered, leading to registration of Phulwarisharif P.S. Case No. 964 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 has been brought on record, as Annexure-2. It is further submitted that the motorcycle in question was not being used for carrying liquor and hence it is not amenable to confiscation. It is further submitted that the vehicle in question is rotting under the open sky and till date confiscation proceeding has not been initiated, statement to that effect has been made in paragraph no.8 of the petition which reads as follows:-

“That till date the petitioner has no knowledge nor any notice has been received by him about his motorcycle.”

Learned Counsel appearing on behalf of the respondent-State, relying on the counter affidavit, dated 27.01.2020, filed on behalf of respondent no. 3 submits that till date, proposal for initiation of confiscation proceedings under Section 58(1) of the Act has not been transmitted to the confiscation authority. The statement, made in paragraph 7 of the counter affidavit, reads as under:-



“That it is humbly submitted that the office of the S.S.P., Patna has not sent the confiscation proposal in the aforesaid matter”.

Having heard learned counsels for the parties and considering their rival submissions, we are of the considered view that the confiscation proceeding has not been initiated with regard to the vehicle in question, and since about two lakh cases are pending under Excise Act in the State of Bihar, hence there is no likelihood of trial being concluded in near future. Moreover, the vehicle in question, at best, is only kept for the purpose of producing the same as material exhibit during trial.

In the facts and circumstances of the present case, no useful purpose will be served in allowing the vehicle to rot under open sky leading to a complete waste of public money. Keeping the vehicle in such condition and allowing to reduce it into junk, would ultimately result into waste of public money has been deprecated by the Supreme Court in the cases of **Sunderbhai Ambalal Desai Vs. State of Gujrat and other**, reported in (2002) 10 SCC 283 and **General Insurance Council and Ors. Vs. State of Andhara Pradesh and Ors.**, reported in (2010) 6 SCC 768.

Moreover, learned counsel for the respondents has no objection to the provisional release of the vehicle in question, we



direct that the same be released provisionally till the conclusion of the trial, if any, on the following conditions to the satisfaction of learned Additional Sessions Judge II -cum- Special Judge, Excise, Patna or if confiscation proceeding is initiated in the meantime to the satisfaction of Collector, Patna:

(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 Additional Sessions Judge II -cum- Special Judge, Excise, Patna or the Collector, Patna, 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 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 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.)

Rishi Kumar/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	05.03.2020
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