

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.577 of 2020

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Pramod Kumar @ Pramod Kumar Mahto aged about 25 year Male son of late Ramchandra Mahto, resident of village Bathwara P.S. Gayaghat District Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The Principal Secretary Excise and Prohibition Department, Govt. of 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 : Ms. Runa, AC to GP7

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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 : 14-02-2020

Heard Mrs. Kumari Sujata Sinha, learned counsel for the petitioner and Ms. Runa, learned AC to GP 7.

The present writ application has been filed for release of HF Deluxe motorcycle, bearing Registration No. BR07AC8511, which has been seized in connection with Fulwarisharif P.S. Case No. 964 of 2019, registered for the offences punishable under Sections 30(a)/37(b)/37(c) of the 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 in paragraph no. 1 of the writ application, reads as follows:-



“I. For issuance of an appropriate writ / writs, order / orders or direction to release the Motor Cycle bearing Registration no. BR07AC8511, Engine no. HA11ENJ9C02391 and Chasis no. MBLHAR232J9CO1121 which has been seized in connection with Fulwarisharif P.S. Case no. 964 /19 dated 22.10.19 which has been registered for an offence u/Ss 30(a)/37(b)/37(c) Bihar Prohibition and Excise Act 2016.

II. For issuance of an appropriate writ / writs, order / orders direction / directions to the respondents to accept the surety given by the petitioner at the time of release of the Motor Cycle of directed by the Hon’ble Court at the time of release the Motor Cycle bearing Registration no. BR07AC8511.

III. To grant of any other relief or reliefs for which as your Lordships may deem fit and proper in the facts and circumstances of the case.”

The prosecution case, as per the written report of Rameshwar Paswan, Sub Inspector of Police, addressed to the Station House Officer, Fulwarisharif P.S. is to the effect that on 22.10.2019 at 5.00 P.M., information on mobile was received that



some persons are creating nuisance in a drunken condition near Khoja Imli, whereupon, the informant reached there at 7.50 P.M. and began checking the vehicle and during the course of the same three persons were apprehended who disclosed their name as, Pramod Kumar (petitioner), Sujeet Kumar and Nitish Mahto and from the motorcycle in question 3.75 ML of Indian Made Foreign Liquor was recovered and three other persons were found in intoxicant condition namely Md. Sheru, Nishant Singh and Shashiraj Tiwari.

It is submitted by learned counsel for the petitioner that petitioner is the owner of the vehicle in question. The certificate of registration of the vehicle in question has been brought on record, as Annexure- 2 to the writ petition. The petitioner was not found in an intoxicated condition, hence no case under Section 37 of the Act is made out against the petitioner. It is further submitted that the vehicle in question is rotting under the open sky and keeping the vehicle in such condition and allowing it to reduce into a junk would ultimately result into wastage of public money and petitioner is ready to produce the same after its release as and when directed by the concerned court or the confiscation authority and petitioner shall not change the shape of the vehicle in question or transfer the same creating any kind of adverse interest against



the interest of the State during the pendency of the confiscation proceeding, if any.

Ms. Runa, learned AC to GP 7 relying upon the counter affidavit dated 07.02.2020 filed on behalf of respondent no. 3 i.e. District Magistrate, Patna has stated that till date, the proposal has not been received under Section 58(1) of the Act for initiation of confiscation proceeding. A statement to that effect has been made in paragraph no. 5 of the counter affidavit, which reads as follows:-

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

Considering the fact that proposal has not been transmitted for initiating confiscation proceeding, hence keeping the vehicle in question in seized condition only for the purposes of allowing it to be used as a material exhibit during the trial would only reduce the vehicle into junk, particularly when the trial is not likely to be concluded in near future, in view of the fact that more than two lakhs cases have been instituted under the Excise Act. Accordingly we direct for provisional release of the vehicle in question bearing Registration no. BR07AC8511 till the conclusion of the trial to the satisfaction of learned A.D.J. II-cum-Special



Judge Excise, Patna or the Collector, Patna i.e. the confiscation authority, if any confiscation proceeding is initiated against the vehicle 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. II-cum-Special Judge Excise, Patna 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 made clear the Court below shall complete the exercise of release of the vehicle in question on fulfilling the aforementioned conditions within a period of ten days from the date of receipt / production of a copy of this order.

It is further made clear that we have not expressed any opinion with regard to the merits of the case or with regard to the ownership of the vehicle in question.

Accordingly, the writ petition is disposed of.

(Dinesh Kumar Singh, J)

praful/-

(Anil Kumar Sinha, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18-03 -2020
Transmission Date	NA

