

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.326 of 2020

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Harikishun Chauhan @ Harikishun Prasad @ Harikishun Son of Ganaga
Vishun Prasad@Ganaga Vishun@Ganaga Vishun Chauhan Resident of
Village- Taraper, P.S.- Harnaut, District- Nalanda.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Secretary, Department of Excise, Bihar,
Patna.
2. The Collector cum District Magistrate Patna, District- Patna.
3. The Superintendent of Police Patna, District- Patna.
4. The S.H.O. cum Officer In Charge Chowk Police Station, District- Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anil Chandra, Adv.
For the Respondent/s : Mr. Vikash Kumar, SC-11
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 : 06-02-2020

Heard learned counsel for the petitioner and
learned counsel for the respondents.

The present Writ Application has been filed for
release of Hero Passion Pro motorcycle in favour of the
petitioner, bearing Registration No. BR-21F3923, seized in
connection with Chowk P.S. Case No.285 of 2019, registered



for the offences punishable under Section 30(a) of the Bihar Prohibition and Excise Act, 2016, as amended by the Amendment Act 8 of 2018. The prayer as stipulated in paragraph No.1 of the writ application, reads as under :-

“That the petitioner prays for the following reliefs through the present writ application:

(I) To issue an appropriate writ, order or direction including a writ in the nature of mandamus commanding the respondents to release the seized Hero Passion Pro Motorcycle bearing registration No. BR21F3923, Chassis No. MBLHA10EWBHM21532, Engine No. MA10EDBHM21798 of the petitioner which has been seized in connection with Chowk P.S. Case No. 285/19 for an offence u/s 30(a) of Bihar Prohibition and Excise (Amendment) Act, 2016 during the pendency of finalization of the confiscation proceedings before the learned District Magistrate, Patna or pendency of the



criminal case in the Court of Special Judge,
Patna.

(ii) To issue an appropriate writ/order/direction directing the respondents not to take any coercive measures against the petitioner.

(iii) To give any other appropriate relief /reliefs as your lordships may deem fit and proper for the end of justice.”

The prosecution case as per the written report of A.S.I., Manoj Kumari Singh, submitted to the SHO, Chowk Police Station, Patna City, dated 17.08.2019 to the effect that on the basis of secret information that illicit liquor is being transported through a motorcycle, one Passion Pro motorcycle bearing registration No. BR-21F3923 was intercepted and from the same, 20 litres of Country Made Liquor were recovered, leading to registration of Chowk P.S. Case No. 285 of 2019.

It is submitted by learned counsel for the petitioner that the petitioner is the registered owner of the vehicle in question and a copy of certificate of registration of the said vehicle has been brought on record, as Annexure-2. It is further



submitted that till date, no confiscation proceeding has been initiated, statement to that effect has been made in paragraph No.6 of the petition, which reads as under :-

“That the petitioner humbly submits that in the present case no confiscation proceeding has been initiated against the alleged seized motorcycle as yet and criminal trial pending against the named accused persons.”

It is further submitted that the seizure has been made by an A.S.I., 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.

Learned counsel for the respondent, relying upon the counter affidavit dated 06.02.2020, submits that proposal for initiation of confiscation proceeding has not been received, but a proposal with regard to destruction of seized liquor has been received. A statement to that effect has been made in paragraph No. 6 of the petition which reads as under :-

“6. That S.S.P., Patna has requested the District Magistrate, Patna for passing order for destroying the seized country made liquor U/s-56, 57 & 58 of the



Bihar Prohibition and Excise Act, 2016. However, the confiscation proposal with regard to the seizure of the said vehicle has so far not been sent by the office of the S.S. P., Patna.”

Considering the fact that since neither there is any valid report for initiating confiscation proceeding under Section 58(1) of the Act for confiscating the motorcycle in question, nor confiscation proceeding has been initiated, no useful purpose will be served allowing the vehicle to reduce to junk only for the purpose of producing the same as material exhibit during trial. Since more than two lacks cases have been registered under the Act in question, hence, there is no likelihood of conclusion of the trial in near future.

Keeping the vehicle in such condition and allowing it to reduce into junk, would ultimately result into waste 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, (2002) 10 SCC 283 and in the case of *General Insurance Council and Ors. Vs. State of Andhara Pradesh and Ors.*, (2010) 6 Supreme Court Cases 768.

Accordingly, we direct that the vehicle in question,



i.e., Hero Passion Pro motorcycle bearing registration No.BR21F 3923 be provisionally released till the conclusion of the trial or conclusion of the confiscation proceeding, if any, on the following conditions to the satisfaction of learned Additional District and Sessions Judge-cum-Special Judge (Excise), Patna or 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 A.D.J.-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, if any or trial;

(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 from the learned Court below to conclude whole exercise of release 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	

