

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.135 of 2020

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Nitish Kumar Yadav, son of Suresh Yadav, Resident of Village- Balahpur, P.S.
Nayagoan, District Begusarai.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Excise, Bihar, Patna.
2. The District Magistrate-cum- Collector, District Begusarai.
3. The Superintendent of Police, District Begusarai.
4. The Sub Divisional Police Officer Begusarai.
5. The Sub Divisional Officer, Begusarai.
6. The SHO Nayagaon Police Station Begusarai.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Sandip Kumar Gautam, 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 : 13-01-2020

Heard Mr. Sandip Kumar Gautam, learned counsel
for the petitioner and learned AC to SC-5 for the respondent-
State.

The present writ application has been filed for release
of Bolero Pickup van bearing Registration No. BR 09GA 2428,
in favour of petitioner which has been seized in Nayagaon P.S.



Case No. 89 of 2018 registered for the offence punishable under Section 30(a) of Bihar Prohibition and Excise Act, 2016, as amended by the Amendment Act 8 of 2018 (hereinafter referred to as 'the Act').

The prosecution case got initiated on the basis of self statement of A.S.I., Lalan Ram, Nagaon Police Station is to the effect that on 23.11.2018 at 10.50 P.M., the informant received a secret information that illicit liquor is being unloaded from a truck on a Bolero pick up van. Consequently a raid was laid when a pickup van was intercepted and total 767.520 of Indian Made Foreign Liquor were recovered from the same, leading to registration of Nayagaon P.S. Case No. 89 of 2018.

It is submitted by learned counsel for the petitioner that the petitioner claims to be the registered owner of the vehicle in question. The copy of the registration certificate of the vehicle in question has been brought on record as Annexure-2. It is further submitted that the petitioner has received a notice suggesting initiation of Confiscation Case No. 11 of 2019 with regard to the vehicle in question. A statement to that effect has been made in paragraph No.7 of the petition which reads as under :-

“7.That it is pertinent to mention here that the petitioner has already received



notice sent by the D.M. Begusarai in Confiscation Case No. 11 of 2019 in which confiscation proceeding has already been initiated.”

It is submitted by learned AC to SC-5 that proceeding of the said confiscation case will be concluded within a time frame.

Considering the fact that once the confiscation proceeding is initiated, the exercise of discretionary jurisdiction under Article 226 of the Constitution of India, having self imposed restrictions can be exercised in exceptional or in a monstrous situation. Considering the view taken by the Apex Court in the case of **State of Karnataka Vs. K. Krishnan** reported in **(2000) 7 Supreme Court Cases 80** and in the case of **State of West Bengal and Ors. Vs. Sujit Kumar Rana** reported in **(2004) 4 Supreme Court Cases 129**, a Full Bench of this Court in the case of **Baleshwar Roy Vs. The State of Bihar and Ors.** reported in **2018(4) PLJR 970**, held as follows:

“62. It may, however, be added that Article 226 of the Constitution of India provides power to the High Court to issue writs to any person or authority, including in appropriate cases, any Government, any order or writs (including writs in the nature of *habeas corpus*, *mandamus*, *prohibition*, *quo warranto* and *certiorari*, or any of them, for the enforcement of any of the rights



conferred by Part-III and for any other purpose). Similarly Article 227 of the Constitution of India provides the power of superintendence over all Courts and Tribunals throughout the territories in relation to which any High Court exercises its jurisdiction. The powers of the High Court under Articles 226 and 227 of the Constitution of India cannot be curtailed under any circumstance, as the power flows from the Constitution itself. No statutory bar can affect the power of the High Court under Articles 226 and 227 of the Constitution of India.

63. Despite such wide and untrammelled powers, without any circumscription by external restrictions, the Courts have evolved certain self-imposed limits while exercising these powers. The High Courts, normally, would not go beyond justified inhibitions under any Statute except where there is a complete jettisoning of rule of law or under exceptional circumstances which demand timely judicial interdict. This inhibition is basically ordained, keeping in mind that there is a national weal behind any valid piece of Legislation incorporating and inhering in itself the social objective behind any Legislation. Though, no limitations or fetters have been put on the powers of the High Court under Articles 226 and 227 of the Constitution of India, as the High Courts perform as sentinel on the qui-vive, but such power is not to be exercised casually and without coming to the conclusion that non-exercise of such power would lead to positive injustice. Times without number, it has been held by the High Courts that only under condition of a person establishing that substantial injustice has or is likely to ensue, such extraordinary powers can be exercised. It needs no adumbration by this date that the plenary powers of the High Court have only to be exercised in the interest of justice.



64. Thus, an order of release may be passed under Article 226/227 of the Constitution of India, even pending confiscation proceedings, but only when it is established before the Court that the procedure prescribed and the law in that regard has been completely flouted and that there is complete violation of the procedure prescribed for confiscation, viz., notice to the offender before confiscation, allowing him opportunity of giving written representation and affording hearing on the issue to him and that such injustice cannot be remedied without the exercise of the extraordinary power.

65. Needless to state that under Article 226 of the Constitution of India, the Court will not go into the disputed question of facts.

66. Thus, the powers directing for release of the vehicles or goods, during the pendency of the confiscation, can only be sparingly exercised under monstrous situations and circumstances when injustice occurs because of non-fulfillment of the conditions for confiscation.”

Since the vehicle in question was seized on 23.11.2018, it is expected that the Respondent No. 2, the District Magistrate-cum-Collector, Begusarai will conclude the proceeding of Confiscation Case No.11 of 2019 and dispose of the same by a reasoned and speaking order within a period of eight weeks from the date of receipt/production of a copy of this order in accordance with law.

The petitioner is also expected to appear regularly and participate in the confiscation proceeding.



Accordingly, with the above observation and direction, the present writ application is disposed of.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

Ashwini/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.01.2020
Transmission Date	NA

