

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.2226 of 2020

Pappu Sah aged about 46 years, (male) son of Gajendra Sah, resident of village-Srinagar, Raghunathpur Barari P.O. - Chharrapatti, P.S.- Sahebpurkamal, District- Begusarai.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary of Excise Department, Government of Bihar, Patna.
2. The Collector cum- District Magistrate, Khagaria.
3. The Superintendent of Police, Khagaria.
4. The Station House Officer, Khagaria Police Station, District- Khagaria

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Praveen Kumar Agrawal

For the Respondent/s : Ms. Runa, AC to GP – 7

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

and

HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

Date : 24-02-2020

Heard Mr. Praveen Kumar Agrawal, learned counsel for the petitioner and Ms. Runa, learned A.C. to G.P. 7.

The present writ application has been filed for release of three wheeler (passenger) vehicle bearing Registration no. BR09PA-3999, which has been seized in connection with Khagaria P.S. Case No. 720 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 8 of 2018 (hereinafter referred to as ‘the Act’).

The relief prayed for in paragraph- 1 of the writ petition reads as follows:-

“That this is an application for issuance of an appropriate writ, order or direction, directing the respondents concern to release the Three wheeler (passenger) vehicle bearing Vehicle no.



BR09PA-3999, Receipt / APPL No. BR9D190800001848/BR190821507380, Chassis no. MBX0003BFXE862236 in favour of the petitioner, which has been in connection with Khagaria P.S. 720 of 2019 instituted for offence under section 30(a) of the Bihar Prohibition and Excise Act 2016, where by the vehicle bearing Registration, Engine, and Chasis no. not mention in the seizure list. Further direct the respondents to release the vehicle of the petitioner. And / or any other relief / writ / writs / order / orders / directions, for which the petitioner is found to be entitled in the facts and circumstances of the case”.

The prosecution case as per the written report of Sub Inspector of Police Gauri Shankar Ram submitted to the Station House Officer, Khagaria P.S. is to the effect that on 13.09.2019 during the course of vehicle checking an auto rickshaw was intercepted in which three persons were travelling, but one managed to escape, while, two persons were apprehended, who disclosed their names as; Sanjay Kumar and Deepak Singh and from the vehicle in question 23.40 liters of Indian Made Foreign Liquor was recovered. The apprehended accused disclosed that they were carrying the same to the house of escaped accused Bengi Yadav. Consequently, it led to registration of Khagaria P.S. Case No. 720 of 2019.



It is submitted by learned counsel for the petitioner that the 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 -1 to the writ petition. Learned counsel for the petitioner submits that petitioner has not been made accused, he was not travelling on the vehicle in question and has not been noticed till date to suggest that any confiscation proceeding has been initiated. The petitioner is ready to produce the vehicle as and when directed by the concerned court, in case it is released and submits that he will not change the shape or transfer the vehicle in question creating any kind of adverse interest against the interest of the State during the pendency of the confiscation proceeding.

Ms. Runa, learned counsel appearing for the respondents relying upon the counter affidavit filed on behalf of respondent no. 3 i.e. Superintendent of Police, Khagaria submits that confiscation proceeding being Confiscation Case No. 377 of 2019-20 has been initiated and report from D.T.O., Khagaria regarding the ownership of the vehicle in question is awaited. Paragraph 9 of the counter affidavit reads as follows:-

“9. That the averments made in para- 8, it is not fact that confiscation proceeding has not been started as yet rather a confiscation proceeding vide



377/19-20 has been already initiated upon the application of the I.O. of this case in which D.T.O., Khagaria report regarding the ownership of the vehicle is awaited and on 11.02.2020 has been fixed as the next date of the proceeding.”

She further submits that recovery of liquor from the vehicle in question is admitted hence it is liable for confiscation under Section 56 of the Act.

Having heard learned counsel for the parties and from the perusal of the materials available on record it appears that seizure was made on 13.09.2019. The present writ application was registered on 29.01.2020 and the matter was adjourned on the request of learned GP - 7 vide the order dated 31.01.2020 for seeking instruction and filing counter affidavit, but no counter affidavit has been filed on behalf of the Collector -cum- District Magistrate, Khagaria. It appears that for the unexplained reason the proposal for confiscation has been forwarded by the Superintendent of Police, Khagaria to the District Magistrate, Khagaria contrary to the provisions contained in Section 58(1) of the Act which mandates such report to be forwarded by the seizing or detaining authority, who is Sub Inspector of Police. Moreover report under Section 58(1) of the Act has been transmitted and the confiscation proceeding has been initiated



without ascertaining the owner of the vehicle in question which shows the callous manner in which serious proceeding like the confiscation one is being conducted by the Collector. The above facts get reflected from the averments made in paragraph no. 9 of the counter affidavit, which reads as follows:-

“9. That the averments made in para- 8, it is not fact that confiscation proceeding has not been started as yet rather a confiscation proceeding vide 377/19-20 has been already initiated upon the application of the I.O. of this case in which D.T.O., Khagaria report regarding the ownership of the vehicle is awaited and on 11.02.2020 has been fixed as the next date of the proceeding.”

The next date fixed in the confiscation proceeding was 11th February, 2020 whereas the counter affidavit was affidavited on 17.02.2020 however, it has not been mentioned therein what order was passed on 11.02.2020.

Considering the fact that petitioner is neither named in the F.I.R. nor from the counter affidavit it appears that till date the ownership of the vehicle has not been ascertained either by the investigating agency or by the Collector, as such, we are constrained to direct for the provisional release of the vehicle in question bearing Vehicle No. BR09PA-3999 to the satisfaction of learned A.D.J.II - cum - Special Judge, Excise, Khagaria or the



Collector-cum-District Magistrate, Khagaria till the conclusion of the confiscation proceeding 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. 75,000/- 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, Khagaria or the confiscation authority i.e. Collector-cum-District Magistrate, Khagaria, 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 expected from the Collector-cum-District Magistrate, Khagaria to get the release process concluded within ten days from the date of receipt / production of a copy of this order. It is further expected from the Collector-cum-District Magistrate, Khagaria to conduct the proceeding strictly as per the provisions of the Act in question. It is expected from the petitioner also to appear in the confiscation proceeding.

The writ petition is disposed of.

(Dinesh Kumar Singh, J)

praful/-

(Anil Kumar Sinha, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05-03-2020
Transmission Date	NA

