

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.365 of 2020

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Jitendra Kumar, Son of Shiv Kumar Chaudhary, Resident of Village- Kaswa
Pachrukhi, P.S.- Akbarpur, District- Nawada Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Department of Excise,
New Secretariat, Bihar, Patna.
2. The District Magistrate, Nawada.
3. The Superintendent of Police, Nawada.
4. The Officer-in-charge, Akbarpur P.S., District- Nawada.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Alok Kumar Alok
For the Respondent/s : Ms. Roona, AC to GP 7

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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 : 04-02-2020

Heard Mr. Alok Kumar Alok, learned Counsel for the
petitioner and Ms. Roona, learned Assistant Counsel to
Government Pleader No. 7 for the respondents.

The present writ application has been filed for release of
Hero Splendor Plus motorcycle, bearing Registration No. BR27L-
8456, which has been seized in connection with Akbarpur Police
Station Case No. 420 of 2019, registered for the offence
punishable under Section 30(a) of the Bihar Prohibition and Excise
Act, 2016, as amended by Amendment Act 8 of 2018 (hereinafter
referred to as 'the Act').

The relief, as prayed for, stipulated in paragraph 1 of the
writ application, reads as follow:-



“That the petitioner craves indulgence of this Hon’ble Court for issuance of an appropriate Writ in the nature of Mandamus, directing the respondents to release the Splendor Plus Motorcycle of the petitioner bearing Registration No. BR27L-8456, Chassis No. MBLHAW087KH D09870, Engine No. HA10AGKHD15216, seized in connection with Akbarpur P.S. Case No. 420 of 2019, u/s 30(a) of Bihar Prohibition and Excise Act, 2016.”

The prosecution case got initiated on the basis of the written report of Barelal Yadav, Assistant Sub Inspector of Police, Akbarpur Police Station, submitted to the Station House Officer, Akbarpur Police Station, to the effect that on 30.09.2019 at 5:15 PM, during patrolling duty, an information was received that one person is carrying liquor on a motorcycle. Subsequently, one motorcycle was intercepted and from the said motorcycle, 7 litres of country made liquor was recovered, leading to the registration of Akbarpur Police Station Case No. 420 of 2019 though the petitioner is not named in the First Information Report.

It is submitted by learned Counsel for the petitioner that the petitioner is the registered owner of the vehicle in question and the certificate of registration of the seized vehicle has been brought on record by way of Annexure-2 to the writ petition. The vehicle is rotting under the open sky. It is further submitted that confiscation



proceedings has not been initiated, statement to this effect has been made in paragraph 11 of the writ application. The petitioner is ready to produce the motorcycle in question as and when required by the Court concerned and undertake not to change the shape and nature of the motorcycle in question and also not to transfer or alienate the motorcycle in question.

Ms. Roona, learned AC to GP-7, relying on the counter affidavit, dated 04.02.2020, filed on behalf of respondent nos. 3 and 4, submits that in pursuance to the report under Section 58(1) of the Act being submitted by the Superintendent of Police, Nawada, vide letter dated 15.10.2019, the confiscation proceeding has been initiated, vide Confiscation Case No. 663 (M) of 2019. The liquor was recovered from the vehicle in question and accordingly the same was liable to be confiscated under Section 56(b) of the Act.

Having heard learned Counsel for the parties and on perusal of the record, it appears that the seizure has been made by the Assistant Sub-Inspector of Police, Barelal Yadav, which is evident from the very opening line of the written report. Section 73(e) of the Act mandates the seizure to be made by an officer not below the rank of Sub-Inspector of Police. Hence the seizure is contrary to the provisions of the Act. Section 58(1) of the Act



mandates the report to be transmitted to the Collector of the area by the detaining and seizing authority; whereas in the present case, the Superintendent of Police, Nawada has transmitted the said report to the Collector, Nawada. The order of the Collector, Nawada dated 29.11.2019 passed in Confiscation Case No. 663 (M) of 2019 reflects that the notice was issued to the Opposite Party and the only opposite party in the present case is Sakaldeo Kumar, who is not the owner of the vehicle in question; rather, he is the brother of the petitioner, who was driving the vehicle in question at the time of seizure. The notice was subsequently issued on 02.12.2019 under the signature of Incharge officer, District Legal Section, Nawada, which also reflects that the notice was only sent to the brother of the petitioner, Sakaldeo Kumar, which suggest that confiscating authority, before initiating the confiscation proceeding was not aware about the owner of the vehicle in question. As a result, confiscation proceedings deemed to have not been initiated against the owner of the vehicle in question. This reflects the callous manner in which the quasi judicial function has been conducted by the prosecuting as well as confiscating agency.

In view of the lapses discussed above, we are constrained to direct that the vehicle in question be released



provisionally till the conclusion of the Confiscation Case No. 663 (M) of 2019 on the following conditions to the satisfaction of Collector, Nawada:-

(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 Collector, Nawada;

(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 of release will be concluded by the Collector, Nawada 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 accusation 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)

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(Anil Kumar Sinha, J)

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	25-03-2020
Transmission Date	N/A

