

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.196 of 2020

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Bangali Ray, S/o Shubhash Ray, Resident of Mohalla-New Gosai Tola, Ward
No. 20, Danapur-cum-Khagaul, P.S.-Maner, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department,
Government of Bihar, Patna.
2. The District Magistrate, Patna.
3. The Superintendent of Police, Patna.
4. The Officer-in-Charge, Bihta, P.S. Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Sanjay Kumar, Advocate
For the Respondent/s	:	Mr.Vivek Prasad, GP-7
		Miss Luna, 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 : 03-02-2020

Heard Mr. Sanjay Kumar, learned counsel for the
petitioner and Miss Luna, learned A.C. to GP-7 for the
respondents.

The present writ application has been preferred for
release of Three-Wheeler passenger vehicle bearing Registration
No. BR01PJ-5101 which has been seized in connection with
Bihta P.S. Case No. 818 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 by the petitioner as stipulated in paragraph no.1 of the writ application reads as follows :-

“That the present writ application has been filed with a prayer for release the vehicle bearing no. BR01PJ-5101, Three-Wheeler (Passenger) which has been seized in connection with Bihta Police Station Case No. 818/19 dated 25/8/2019 U/s 30(a) of Bihar Excise and Prohibition Amendment Act, 2018.”

The prosecution case as per the self statement of Inspector, Awadhesh Kumar recorded on 25.08.2019 at 10.30 A.M., is to the effect that during vehicle check, one Auto rickshaw and other persons were intercepted and from the said Auto rickshaw, 24 litres of Indian Made Foreign Liquor were recovered, leading to registration of Bihta P.S. Case No. 818 of 2019.

It is submitted by learned counsel for the petitioner that the recovery was made from the passenger vehicle. The petitioner is the registered owner of the vehicle in question and certificate of registration has been brought on record, as Annexure-2. The vehicle in question is rotting under the open



sky.

Miss Luna, learned AC to GP-7 relying upon the counter affidavit filed on behalf of respondent nos. 3 and 4, the Superintendent of Police, Patna and the Officer-in-Charge, Bihta Police Station respectively submits that the proposal for initiation of confiscation proceeding has been transmitted by the office of Senior Superintendent of Police, Patna vide DR No. 449 dated 23.01.2020. However, it is submitted that the confiscation proceeding has not been initiated as yet.

Having heard learned counsels for the parties and considering their rival submissions, it is admitted position that till date confiscation proceeding has not been initiated though report under Section 58(1) of the Act has been transmitted by Superintendent of Police contrary to the provisions under Section 58(1) of the Act which mandates transmission of report by the detaining or seizing authority who in the present case is Inspector of Bihta Police Station and under such circumstance, it would amount to wastage of property, by allowing the vehicle to reduce it into a junk as a material exhibit during trial which is not likely be concluded in near future in view of the pendency of huge number of cases under the Act. Accordingly, we direct for the release of the three wheeler passenger vehicle bearing



Registration No. BR01PJ-5101 provisionally till the conclusion of the trial or till the conclusion of confiscation proceeding, if the same has been initiated, to the satisfaction of learned Additional District and Sessions Judge-cum-Special Judge (Excise) or the Collector, Patna on 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.-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.

The entire exercise for release may be concluded by the learned Court below within ten days of receipt/production of a copy of this order.

Accordingly, the writ application is disposed of.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

DKS/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	27.03.2020
Transmission Date	N/A

