

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.57 of 2020

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Mamta Devi, W/o Ram Bali Paswan, R/o Village Bahauddinpur, P.O. Kawadih,
P.S. Baligaon, District- Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department,
Govt. of Bihar, Patna.
2. The District Magistrate, Vaishali at Hajipur.
3. The Superintendent of Police, Vaishali.
4. The Police Inspector -cum-Officer Incharge, Jandaha Police Station,
District- Vaishali.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Vasant Vikas
For the Respondent/s : Mr.Vikash Kumar (Sc11)

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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. Basant Vikas, learned counsel for the petitioner
and Mr. Revtikant Raman, learned A.C. to S.C.-11 for the
respondents.

The present writ application has been filed for release of
Hero Mystro Scooty bearing Registration No.BR06BZ-4657 in
favour of the petitioner, which has been seized in connection with
Baligaon P.S. Case No.93 of 2019, registered of 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 as prayed for in paragraph No.1 of the writ application reads as follows :-

“1. That this is an application for issuance of an appropriate writ in the nature of mandamus commanding and directing the respondent authorities to release the vehicles Hero Mystro Scooty bearing Registration No.BR06BZ4657 in favour of the petitioner which had been illegally seized and has been kept in abandoned condition in connection with Baligaon P.S. Case No.93 of 2019 dated 16.09.2019 registered under Section 30(a) of the Bihar Prohibition and Excise Amendment Act, 2018 and for any other relief or reliefs for which the petitioner is found to be entitled from in the facts and circumstances of this case.”

The prosecution case got initiated on the basis of the self statement of Sub Inspector, Dhananjay Chaudhary submitted to S.H.O., Baligaun P.S. is to the effect that on 16.09.2019 at 10:05 A.M. during patrolling, a Scooty was intercepted and on search being made, two bottles of 750 ml each Indian Made Foreign Liquor were recovered, leading to registration of Baligaon P.S. Case No.93 of 2019.

It is submitted by learned counsel for the petitioner that the petitioner is not named in the F.I.R.. It is further submitted that the petitioner had no knowledge that accused, i.e., the husband of the petitioner was carrying liquor on the vehicle. Hence, presumption of innocent under Section 32 of the Act is in her



favour. Learned counsel for the petitioner further submits that the confiscation proceeding has not been initiated till date, however, no statement to that effect has been made in the petition. The petitioner is registered owner of the vehicle in question and certificate of registration has been brought on record, as Annexure-2 series and the vehicle in question is rotting under open sky.

Learned counsel for the respondent-State submits that in spite of the letter being transmitted to the concerned authority, particularly, to the District Magistrate, Vaishali and giving several reminders, even today itself through telephone, no instruction has been received. Hence, it cannot be said that the confiscation proceeding has been initiated

Having heard learned counsel for the parties, it appears that F.I.R. was registered on 16.09.2019, the writ application was filed on 04.01.2020 obviously, after serving the copy of the writ application upon the learned counsel for the State and thereafter, the matter was heard and adjourned on the request of the learned counsel for the respondent-State vide order dated 13.01.2020 for 27.01.2020, the matter was thereafter adjourned with consent of both the learned counsels for the parties but till date, no instruction has been received. In such circumstances, we are constrained to



direct for provisional release since there is nothing on record to suggest that confiscation proceeding has been initiated.

In the facts and circumstances of the present case, no useful purpose will be served in allowing the vehicle to rot under open sky. Moreover, keeping the vehicle in such condition and allowing it to reduce into a 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 reported in **(2002) 10 SCC 283** and in the case of **General Insurance Council and Ors. Vs. State of Andhara Pradesh and Ors.** reported in **(2010) 6 Supreme Court Cases 768.**

Accordingly, we direct the release of Scooty bearing Registration No.BR-06BZ-4657 provisionally till the conclusion of the trial or conclusion of confiscation proceeding to the satisfaction of Special Judge, Vaishali 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.50,000/- but not in the form of bank guarantee or cash, with



two sureties of the like amount to the satisfaction of the Special Court concerned 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.



It is expected from the learned Court below to complete the whole exercise of release the vehicle in question 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 the accusation or the ownership of the vehicle.

Accordingly, the writ application is disposed of with the terms indicated above.

It is expected from the District Magistrate, Vaishali to get separate list prepared with respect to the entire cases registered under the Excise Act in the district in which either confiscation proceeding has been initiated or in which it has not been initiated. Let such list on affidavit be submitted before Registrar General, Patna High Court within ten days of receipt or production of this order.

Let a copy of this order be transmitted to the District Magistrate, Vaishali through fax/email.

(Dinesh Kumar Singh, J)

sanjeev/-

(Anil Kumar Sinha, J)

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.03.2020
Transmission Date	NA

