

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.1244 of 2020**

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Pankaj Kumar Singh, aged about 33 years, Gender – Male, Son of Bhushan Singh, resident of village- Amdardhi (Aamdarhi), P.S.-Ekma, District-Saran at Chapra.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
2. The District Magistrate-cum-Collector, Saran at Chapra,
3. The Assistant Excise Commissioner, Saran at Chapra.
4. The Superintendent of Excise, Saran at Chapra,
5. The Superintendent of Police, Saran at Chapra,
6. The Vehicle Inspector, Saran at Chapra,

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Dewendra Narayan Singh  
For the Respondent/s : Mr. Kumar Pankaj, AC to SC5

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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 : 06-02-2020**

Heard Mr. Dewendra Narayan Singh, learned counsel  
for the petitioner and Mr. Kumar Pankaj , learned AC to SC 5.

The present writ application has been filed basically for release of Hero Glamour motorcycle bearing registration no. BR-04Z-2698, which has been seized in connection with Ekma P.S. Case No. 284 of 2019 registered for the offence punishable under Section 37(c) of the Bihar Prohibition and Excise Act, 2016, as amended by the Amendment Act 8 of 2018 (hereinafter referred to as ‘the Act’) and also for restraining the respondent authorities



from initiation of any confiscation proceeding against the petitioner's motorcycle in question.

The relief, prayed for has been stipulated in paragraph no. 1 of the writ petition, which reads as follows:-

*“That the present writ application is being filed on behalf of the petitioner for issuance of appropriate writ, rule or directions commanding upon the respondents:-*

*(i) For release of Hero Glamour Motorcycle vehicle bearing its Registration Number as BR-04Z-2698, Chassis No. MBLJAR023JGE09127 and Engine No. JA06ERJGE55942 of the petitioner which has been seized in connection with Ekma P.S. Case No. 284 of 2019 registered for the offences punishable under Section 37(c) of the Bihar Prohibition and Excise Act, 2016 on 08.11.2019, seized for the alleged violation of Excise laws.*

*And*

*(ii) Also for restraining the respondent authorities from initiation and completion of confiscation proceeding against petitioner's Hero Glamour Motorcycle vehicle bearing its Registration Number as BR-04Z-2698, seized in*



*connection with Ekma P.S. Case No. 284 of 2019.*

*And*

*(iii) Also for any other relief/reliefs for which the petitioner is found entitled in the eye of law.”*

The prosecution case as per the written report of Assistant Sub Inspector of Police Md. Belal submitted to the Station House Officer, Ekma P.S. is to the effect that on 08.11.2019 at 9.35 P.M., a secret information was received that one Harendra Singh of village – Aamdadhi is creating nuisance in intoxicated condition. Consequently, a raid was laid when it was found that Harendra Singh was creating nuisance while sitting on a motorcycle. Subsequently, he was put to breath analyzer test which was found positive, leading to registration of Ekma P.S. Case No. 284 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 has been brought on record, as Annexure- 2 to the writ petition. He further submits that the petitioner is not named in the F.I.R. nor there is any accusation against the petitioner. Simply because the F.I.R. named accused



was sitting on the motorcycle of the petitioner, his motorcycle has been seized.

Section 37 (c) of the Act prescribes penalty for consumption of liquor for whoever drinks and creates nuisance or violence at any place including in his own house or premises. Section 37(c) reads as follows:-

**“37. Penalty for consumption of liquor.-** Whoever, in contravention of this Act or the rules, notification or order made there under-

(c) drinks and creates nuisance or violence at any place including in his own house or premises.”

Learned counsel for the petitioner submits that the offence as such is only made out against the F.I.R. named accused person i.e. Harendra Singh and illegally, the petitioner's motorcycle has been seized, has been rotting under the open sky and the petitioner is ready to produce the vehicle in question as and when directed by the Court or confiscation authority after its release. Considering the nature of accusation since the vehicle in question was not being used for carrying liquor, hence it is not liable for confiscation under Section 58(1) of the Act and keeping the vehicle in such condition and allowing it to reduce into a junk would ultimately result into waste of public money and petitioner



is ready to produce the vehicle in question as and when required by the court below.

Learned AC to SC 5 however submits that Section 37(c) of the Act under which the F.I.R. has been registered prescribes the penalty for consuming liquor or intoxicant and creating nuisance or violence at any place including own house or premises. Hence Section 37(c) of the Act is made out against the petitioner.

Considering the rival submissions of the parties, the power to enter into the premises, inspect, search and seizure is stipulated under Section 73 of Chapter VIII of the Act, which specifies the authority who have the power to search and seizure but does not lay down any pre-condition for seizure but that does not mean that the authority can seize anything at any time. The seizure must be backed up by a reasonable, at least a strong suspicion that the vehicle in question has been used for commission of crime, which is absolutely lacking in the present case and hence we find that seizure prima facie has been mechanically done in the present case. Even in the case of drunken driving a Division Bench of this court in the case of Diwakar Kumar Singh Vs. The State of Bihar and Ors. reported in 2018 (3) PLJR 403 held that it shall be mandatory for the confiscating



authority before passing an order on confiscation proceeding when the person is found in drunken condition and no liquor is seized nor the vehicle is used for transportation of the liquor to decide it as a preliminary issue whether in such a condition the vehicle is liable for confiscation under Section 56 of the Act. Here there is no question of the vehicle being confiscated as it has been submitted by learned counsel appearing for the respondents. Section 73(1)(e) of the Act stipulates a seizure by Police Officer not below the rank of Sub Inspector of Police however in the present case seizure has been made by A.S.I. Md. Belal. Hence, the seizure gets vitiated on this ground also. In such a circumstance allowing the vehicle to reduce into a junk which has been deprecated by the Hon'ble 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 Pradsh and Ors.*, reported in (2010) 6 Supreme Court Cases 768, we direct for release of the vehicle in question bearing Registration no. BR-04Z-2698, provisionally, till the conclusion of the trial to the satisfaction of learned Additional District Judge II cum Special Judge, Excise, Saran at Chapra in connection with Ekma P.S. Case No. 284 of 2019 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 A.D.J. II -cum- Special Judge, Excise, Saran at Chapra 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 court concerned to conclude the exercise of release of the vehicle in question within ten days from the date of receipt / production of a copy of this order.

The writ petition is disposed of.

**(Dinesh Kumar Singh, J)**

**( Anil Kumar Sinha, J)**

praful/-

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| AFR/NAFR          | NAFR       |
| CAV DATE          | NA         |
| Uploading Date    | 14-02-2020 |
| Transmission Date | NA         |

