

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1909 of 2020

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Ranjan Kumar, Son of Ram Udgar Mukhiya, Resident of Ward No.12
Korhiya, P.S.-Jainagar, District-Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Bihar Prohibition and Excise, Patna.
2. The Collector-Cum-District Magistrate, Madhubani.
3. The Superintendent of Police, Madhubani.
4. The Superintendent of Excise, Madhubani.
5. The Officer in Charge, Bashopatti, P.S. Bashopatti, District-Madhubani.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Ratanakar Jha, Advocate
For the Respondent/s	:	Mr.Kumar Manish, SC-5
		Mr. Prashant, AC to SC-5

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
and
HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

2 06-02-2020 Heard Mr. Ratanakar Jha, learned counsel for the

petitioner and Mr. Prashant, learned AC to SC-5 for the

respondent-State.

The present writ application has been filed for release
of Yamaha Motorcycle bearing Registration No. BR-32V-7363,
in favour of petitioner which has been seized in Bashopatti P.S.
Case No. 165 of 2019 registered for the offences punishable
under Sections 272, 273 of the Indian Penal Code and Section
30(a) of 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 by the petitioner as stipulated in paragraph no.1 of the writ application reads as follows :-

“That this writ petition has been issuance of an appropriate writ/s, order/s, direction/s including a writ preferably in the nature of Mandamus commanding and directing upon the respondents to release the Yamaha in favour of the petitioner bearing registration No. BR-32V-7363 which has been seized by the S.H.O., Bashopatti, P.S. within Madhubani District in connection with Bashopatti P.S. Case No. 165 of 2019 dated 18.07.2019 for the offences punishable under Section 272/273 of Indian Penal Code read with section 30(a) of the Bihar Prohibition and Excise Act, 2016 which has been forwarded in the court of learned Additional District and Sessions Judge-II, Madhubani.

The petitioner seeks indulgence of this Hon’ble Court to grant him any other relief/s to which the petitioner is entitled in the facts and circumstances of the case.”

The prosecution case as per the self statement of S.I. Indal Yadav recorded on 17.07.2019 at 11.00 P.M., is to the effect that on 17.07.2019 at 9.45 P.M., the informant received information that the illegal trafficking of liquor on Nepal



boarder is going on and consequently, a raid was laid, when nine motorcycles were intercepted and altogether 369 litres of Nepali liquor were recovered and from the motorcycle of the petitioner, 36 litres of Nepali liquor were recovered, leading to registration of Bashopati P.S. Case No. 165 of 2019 for the offences punishable under Sections 272, 273 of the Indian Penal Code and Section 30(a) of Bihar Prohibition and Excise Act, 2016.

It is submitted by learned counsel for the petitioner that though in the FIR, the petitioner's motorcycle Chassis number has been mentioned but he has not been made accused by name. It is further submitted that the petitioner is the registered owner of the vehicle in question and certificate of registration on the same has been brought on record, as contained in Annexure-2. The vehicle in question is rotting in the open sky. The confiscation proceeding has not been initiated till date, but it appears from the counter affidavit filed on behalf of respondent nos. 2, 3 and 4 that in pursuance to the report of Superintendent of Police, Madhubani vide letter No. 3395 dated 01.10.2019 under Section 58(1) of the Act for confiscation of all the nine motorcycles including the motorcycle of the petitioner, Confiscation Case No. 878 of 2019-20 has been initiated vide order dated 03.12.2019 passed by Collector, Madhubani and



directed for issuance of notice to the owner of the seized vehicles but it appears from the actual notice issued under the signature of Incharge Deputy Collector, District Legal Cell, Madhubani on 17.12.2019 that notice has been issued to the FIR named accused persons, namely, Sanjeev Yadav, Suraj Kumar Rai, Baijnath Kumar, Jiwachh Kumar and Chandan Kumar Kamat and no notice has been issued to the petitioner.

Learned counsel for the respondents submits that the liquor has been seized from the motorcycle of the petitioner and consequently, confiscation proceeding has been initiated, hence, it is liable for confiscation under Section 56(b) of the Act.

Considering the fact that from the material on record it does not appear that the proposal or report under Section 58(1) of the Act has been sent by Superintendent of Police with the detail of the ownership of the vehicle in question stipulating the confiscation proceeding being initiated against the owner of the vehicle. No law permits such a stringent thing to be confiscated without any notice to the owner of the vehicle. In the circumstances, we do not find that the confiscation proceeding has been initiated against the motorcycle of the petitioner.

In the circumstances, we direct for release of the



motorcycle in question to the satisfaction of Respondent No. 2, the Collector -cum- District Magistrate, Madhubani in connection with Confiscation Case No. 878 of 2019-20, arising out of Basopati P.S. Case No. 165 of 2019 provisionally till the conclusion of 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. 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 -cum- District Magistrate, Madhubani;

(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 authority concerned;

(V) At the time of release of the vehicle in question,



the concerned 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 will be done by the Collector -cum- District Magistrate, Madhubani within ten days of receipt/production of a copy of this order.

It is expected from the Collector -cum- District Magistrate, Madhubani to conduct the confiscation proceeding considering the lapses as discussed above noticed by this Court in the present order.

Accordingly, the writ application stands disposed of.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

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