

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.380 of 2020

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Karn Kumar @ Karan Kumar, S/o Babu Saheb Singh, Resident of Village-
Sarawe, P.S. Siwan Muffasil, District- Siwan.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise, Government of Bihar, Patna.
2. The Principal Secretary, Excise, Government of Bihar, Patna.
3. The District Magistrate, Siwan.
4. The Superintendent of Police, Siwan.
5. The Excise Superintendent, Department of Excise, Siwan.
6. The S.H.O. of Nautan P.S., District Siwan.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ajay Kumar Pandey
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 : 04-02-2020

This Court finds that the matter relates to a case for release of vehicle which has been seized under the provisions of the Bihar Prohibition and Excise Act, 2016. But on the corner page of the Court file, the subject has been stated/labelled as Sales Tax Act/VAT matter, which is demonstrative of the casual manner of functioning of the concerned Section and the Stamp Reporting Section as well. It is expected that such errors be not repeated in future.

Heard Mr. Chandan Kumar, learned counsel for the petitioner and learned A.C. to S.C. -11 appearing on behalf of the respondents.



The present writ application has been preferred for release of Mahendra Tractor of the petitioner bearing Registration No.BR-29Q-8120, which has been seized in connection with Nautan P.S. Case No. 197 of 2019, registered for the offences punishable under Sections 30(a) and 41(1) 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 in paragraph No.1 of the writ application reads as follows :-

"1. That this writ petition is being filed for issuance of writ/ writs, direction/ directions, command/commands and thereby issue direction to the respondent authorities, especial respondent no.3 to release the Mahendra Tractor of the petitioner bearing Registration number BR39Q-8120 Engine number RENW02231, Chasis no.RENW02231 in favour of petitioner which has been seized by the respondent no.6 in connection with Nautan P.S. Case No.197 of 2019 on 09.11.2019 when police reached near the village Sirisiya near Tetar Baba asthan then they saw that a tractor was coming towards Mathia More two person including driver were sitting on the same, they were caught and disclosed there name as Srikant Yadav and Mintu Kumar and from the toolbox of the tractor 2 Ltrs, Desi wine was recovered."

The prosecution case got initiated on the basis of the written report submitted by Mr. Ram Jatan Yadav, A.S.I. submitted before the S.H.O., Nauran P.S. to the effect that on 09.11.2019, a raid was laid when a tractor was intercepted on which apart from the driver, two more persons were found travelling who disclosed



their names as Srikant Yadav and Mintu Yadav and from the said vehicle, two litres of illicit countrymade liquor were recovered. Thereafter the vehicle was seized and consequently, Nautan P.S. Case No.197 of 2019 was registered.

It is submitted by learned counsel for the petitioner that the petitioner is the registered owner of the vehicle in question and certificate of registration of the said vehicle has been brought on record, as Annexure-2. The petitioner has not received any notice with regard to initiation of any confiscation proceeding. Statement to that effect has been made in paragraph no.11 of the writ petition. It is further submitted that the vehicle is rotting under the open sky, however, he is ready to produce the vehicle before the learned Court below or the confiscation authority, as and when required. The petitioner will neither change the shape of vehicle nor transfer the ownership of the vehicle in question till conclusion of trial.

Learned A.C. to S.C.11 relying upon the counter affidavit filed on 28.01.2020 on behalf of the respondent No.3, District Magistrate, Siwan submits that the Confiscation Case No.115 of 2019-20 has been initiated in connection with Nautan P.S. Case No.197 of 2019 and notice has been served upon the petitioner on 23.01.2020 through Special messenger. Paragraph No.5 of the counter affidavit reads as follows :-



“5. That is is stated that Confiscation Case No.115/2019-20 has already been initiated whereunder the notice has been sent on 22.01.2020 and served upon the petitioner through special messenger on dated 23.01.2020. The petitioner may appear and agitate his claim/plea in the said Confiscation proceeding which shall be decided in accordance with law.”

Learned counsel for the respondent further submits that liquor was recovered from the vehicle in question, hence the vehicle was liable for confiscation under Section 56(b) of the Act and since the confiscation proceeding has already been initiated, it may not be released.

Having heard learned counsel for the parties and from perusal of the records, particularly, the counter affidavit filed on behalf of respondent no.02, the counter affidavit has been filed only with statement of transmitting the report under Section 58 of the Act to the Collector without bringing on record the said report. From the notice issued in Confiscation Case No.115 of 2019-20, it appears that notices have only been transmitted to Srikant Yadav and Driver, Mintu Kumar, which has been received by them. The petitioner was not named in the FIR and it also appears from the record that proposal under Section 58(1) was not sent against the petitioner being the owner of the vehicle, as a result confiscation proceeding has not been initiated against the owner of the vehicle in question. The seizure has admittedly been made by the A.S.I,



Ram Jatan Yadav, which is absolutely contrary to the mandate of Section 73(e) of the Act which stipulates that the seizure shall be made by any police officer, not below the rank of Sub-Inspector of police.

Considering the totality of circumstances, since the confiscation proceeding has been initiated and in view of the ratio laid down by the Full Bench in the case of Baleshwar Roy vs. The State of Bihar and Ors., 2018(4) PLJR 970, we could not have directed for release of the vehicle in question for the present but since the facts, as discussed above suggest that confiscation proceeding for confiscating the vehicle in question though initiated against others, as notices have been issued to Srikant Yadav and driver, Mintu Yadav but not to the petitioner, hence the confiscation proceeding still deemed to have not been initiated against the petitioner, who is claimed to be the owner of the vehicle in question, which has not been disputed by learned counsel for the respondent-State, we are constrained to direct that the tractor in question be released provisionally, till the conclusion of the trial or till the conclusion of confiscation proceeding, if any, to the satisfaction of District Magistrate-cum-Collector, Siwan 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. 75,000/- but not in the form of bank guarantee or cash, with two sureties of the like amount to the satisfaction of the learned Court below 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 made clear that we have not expressed any opinion with regard to the merits of the accusation or with regard to the ownership of the vehicle in question, but it is expected from the Collector-cum-District Magistrate, Siwan to conclude the release process within ten days of receipt of this order and to conclude the proceeding of Excise Confiscation Case No.115 of 2019-20 within a period of seven weeks of receipt and production of copy of this order, in view of the discussions made above and as per the provisions of the Act.

Accordingly, the writ application is disposed of to the extent as indicated above.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

sanjeev/-

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

