

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.234 of 2020

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Dhananjay Kumar, Son of Sivjee Singh, Resident of Village- Baraghara
Hadiyabad, Post- Garhani, P.S. Ayer, District- Bhojpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department,
Government of Bihar Patna.
2. The District Magistrate cum Collector, Bhojpur.
3. The Superintendent of Police, Ara District- Bhojpur.
4. The Officer in-Charge, Ayer Police Station, District- Bhojpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Ganesh Prasad Singh, Advocate Mr. Prabhat Kumar Singh, 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. Prabhat Kumar Singh, 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 Hero motorcycle bearing Registration No. BR03AA-
1759 which has been seized in connection with Ayer P.S. Case
No. 100 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 through this writ application the petitioner seeks following reliefs:-

(A) To issue appropriate writ, order or direction in the nature of mandamus for release of Hero Motorcycle bearing Registration Number BR03AA – 1759 having Chassis No. MBLHAR056J9L08982 and Engine No. HA11EPJ9L09561 in favour of the petitioner, which has been seized by Ayer Police in connection with Ayer P.S. Case No. 100 of 2019 registered on 24.11.2019 under section 30(a) of Bihar Prohibition and Excise Act, 2018.

(B) This Hon’ble Court may adjudicate and hold that pre-trial detention/confiscation aforementioned Hero Motorcycle of the petitioner by the respondents under Bihar Prohibition and Excise (Amendment) Act 2018 is illegal in the eye of law and also the petitioner is entitle for provisional release of his Hero Motorcycle in his favour since the petitioner is the owner of said vehicle and also in view of the Judgment of this Hon’ble Court passed in various similarly situated wherein direction of provisional release of the vehicle seized in the case of the Excise Act has been passed.



(C) To grant any other relief or reliefs under the facts and circumstance of the cases under which the petitioner is entitle.”

The prosecution case as per the self statement of S.I., Kameshwar Singh is the effect that on 24.11.2019 at 10.00 A.M. during vehicle check, two motorcycle borne persons were intercepted, from whom, 40 litres of country made Mahua liquor were recovered, leading to registration of Ayer P.S. Cse No. 100 of 2019.

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 has been brought on record, as Annexure-1. The vehicle in question is rotting in the open sky. It is further submitted that the petitioner is ready to produce the vehicle in question as and when required and till date confiscation proceeding has not been initiated, statement to that effect has been made in paragraph 10 of the writ application.

Learned AC to GP-7, however, submits that the vehicle in question has been seized on the recovery of the country made liquor and hence, the vehicle in question is liable for confiscation. However, in the counter affidavit dated 27.01.2020



filed on behalf of Respondent No. 2, the District Magistrate-cum-Collector, Bhojpur there is specific statement in paragraph 6 that the confiscation proceeding will be initiated on receipt of proposal. The relevant portion of paragraph 6 reads as follows:-

“A confiscation proceeding is likely
to be initiated on receipt of relevant papers
and investigation report from the police.”

Having heard learned counsels for the parties and considering their rival submissions, it is admitted position in view of the counter affidavit of the District Magistrate that neither the proposal under Section 58(1) of the Act has been received nor confiscation proceeding has been initiated. Hence, allowing the vehicle to reduce it into a junk, considering it to be 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, we direct for the provisional release of the vehicle in question being Hero motorcycle bearing Registration No. BR03AA-1759 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 Collector, Bhojpur at Ara 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, Bhojpur at Ara 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 will be done 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	14.02.2020
Transmission Date	N/A

