

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.259 of 2020

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Dharmendra Kumar Choudhary Son of Rajendra Choudhary, Resident of Village-
786 Moti Pan Gali, Mithapur B. Area, P.S. Jakkanpur, District-Patna.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department,
Government of Bihar, Patna.
2. The Principal Secretary, Excise Department, Government of Bihar, Patna.
3. The District Magistrate-cum-Collector, Patna.
4. The Senior Superintendent of Police, Patna.
5. The Sub-Inspector of Police, Police Station Bikram, District-Patna.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Rakesh Bihari Singh
For the Respondent/s : Mr.Kumar Manish (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 : 31-01-2020

Heard learned counsel for the petitioner and learned counsel
appearing on behalf of the respondents.

The present writ application has been preferred for release of
Passion Pro motorcycle bearing Registration No. BR-01DF-0161 in
favour of the petitioner, which has been seized in connection with Spl.
Case No.8131 of 2019, arising out of Jakkanpur P.S. Case No.600 of
2019 registered for the offences punishable under Sections 30(a), 38
and 41 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 prayed for by learned counsel for the petitioner at paragraph No.1 of writ application reads as :-

“1 (I). To release the Motor Cycle registration no.BR-01DF—161 of the petitioner, which was seized by the police of Jakkanpur police station in connection with Spl. Case No.8131 of 2019 arising out of Jakkanpur P.S. Cse No.600/19 registered under Section 30(a), 38, 41 of Bihar Prohibition Excise Act, 20-16.

(II) For any other appropriate relief/reliefs to which the petitioner is found entitled in the facts and circumstances of the present case.”

The prosecution case got initiated on the basis of the written report submitted by Sitaram Kumar, A.S.I. before the S.H.O., Jakkanpur P.S. to the effect that on 09.09.2019 during patrolling, the motorcycle in question was intercepted and from the possession of the motorcycle, 19.440 litres of Indian Made Foreign Liquor were recovered, leading to registration of Jakkanpur P.S. Case No.600 of 2019.

It is further 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-2 series. It is further submitted that the motorcycle is in open air and confiscation proceeding has not been initiated. Statement to that effect has been made in para 11 of the writ application which reads as follows :-

“11. That it is needful to state here that no confiscation has been initiated till today, which is still



pending, hence petitioner deserves relief by this Hon'ble Court".

Mr. Prashant Kumar, learned A.C. to S.C.-5 submits that though the recovery of liquor has been made from the motorcycle in question but proposal under Section 58(1) of the Act has not been transmitted to the Court of District Magistrate, Patna. Statement to that effect has been made in para 7 of the counter affidavit dated 22.01.2019 filed on behalf of respondent no.3, District Magistrate, Patna, reads as follows :-

"7. That is is humbly submitted that the Court of the District Magistrate, Patna has so far not received confiscation proposal in the aforesaid matter."

It has to be considered that Section 58(1) mandates transmission of report by seizing or detaining authority without any reasonable delay but in the present case, the report has not been transmitted by the detaining or seizing authority as yet though the F.I.R. was registered on 09.09.2019 on seizure of alleged liquor and writ application was registered on 07.01.2020.

In the facts and circumstances of the present case, particularly when the proposal / report under Section 58(1) of the Act has not been transmitted for initiation of confiscation proceeding, no useful purpose will be served in allowing the vehicle to rot under open sky leading to a complete waste of public money and reduce it into a junk, 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 that the same be released provisionally till the conclusion of the trial or till the conclusion of confiscation proceeding, if any, to the satisfaction of Additional District & Sessions Judge-II-cum-Special Judge (Excise), or Collector, Patna 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;

(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 release exercise is expected to be concluded by the learned Court below 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 accusation or with regard to the ownership of the vehicle in question.

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

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

sanjeev

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.03.2020
Transmission Date	NA

