

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2411 of 2020

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Ravi Ranjan Kumar, S/o- Bashudeo Prasad Kudwaha, resident of village-
Chailaha Katharia, P.S.- Banjaria, Dist. East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Excise,
Government of Bihar, Patna.
2. The District Magistrate, East Champaran, at Motihari.
3. The Superintendent of Police, East Champaran, at Motihari.
4. The SHO, Turkaulia (Bajaria) Police Station, East Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Rajeev Ranjan
For the Respondent/s : Ms. Manisha Singh, 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 : 25-02-2020

Heard Mr. Rajeev Ranjan, learned counsel for the
petitioner and learned A.C. to G.P. 7 for the respondents.

The present writ application has been filed for release of
TVS Apache RTR 160 motorcycle, bearing Registration No.
BR05Z-8629, seized in connection with Turkauliya (Bajaria)
Police Station Case No. 744 of 2019, registered for the offences
punishable under Sections 272 and 273/34 of the Indian Penal
Code and 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 prosecution case, as per the written report of Md. Shoyab, Sub Inspector of Police, Turkauliya (Bajaria) Police Station, submitted to the Station House Officer, Turkauliya Police Station, to the effect that on 24.10.2019, when raid was being conducted in course of investigation of pending cases, a secret information was received that Amresh Kumar and Akhilesh Kumar are carrying liquor on a motorcycle. Consequently, the said motorcycle was intercepted and the driver of the said vehicle was apprehended whereas the pillion rider succeeded in fleeing away after throwing a bag. The driver disclosed his name as Amresh Kumar and also disclosed the name of the pillion rider as Akhilesh Kumar. Thereafter, from the bag, 13.5 litres of Indian Made Foreign Liquor was recovered, leading to registration of Turkauliya (Bajaria) Police Station Case No. 744 of 2019.

It is submitted by learned Counsel for the petitioner that the petitioner is the registered owner of the vehicle in question and the certificate of registration of the seized vehicle has been brought on record by way of Annexure-2 to the writ petition. The vehicle is rotting under the open sky. It is further submitted that confiscation proceedings has not been initiated. The petitioner is ready to



produce the motorcycle in question as and when required by the Court concerned and undertakes not to change the shape and nature of the motorcycle in question and also not to transfer or alienate the motorcycle in question.

A counter affidavit, dated 24.02.2020 has been filed on behalf of respondent no. 2, the District Magistrate, East Champaran, at Motihari, stipulating at paragraph no. 3 therein that with respect to the vehicle in question, confiscation proceeding being Confiscation Case No. 71 of 2020 has already been initiated against the owner of the vehicle in question, i.e. the petitioner and notice, dated 19.02.2020, has also been issued to the petitioner under the signature of the Incharge Officer, District Legal Cell, East Champaran, at Motihari.

Considering the fact that once the confiscation proceeding has been initiated, the exercise of discretionary jurisdiction under Article 226 of the Constitution of India, having self imposed restrictions can be exercised only in exceptional or in a monstrous situation. Considering the view taken by the Apex Court in the case of **State of Karnataka Vs. K. Krishnan**, reported in (2000) 7 SCC 80 and in the case of **State of West Bengal and Ors. Vs. Sujit Kumar Rana**, reported in (2004) 4 SCC 129, a Full Bench of this Court in the case of **Baleshwar**



Roy Vs. The State of Bihar and Ors., reported in **2018(4) PLJR**

970, held as follows:

“62. It may, however, be added that Article 226 of the Constitution of India provides power to the High Court to issue writs to any person or authority, including in appropriate cases, any Government, any order or writs (including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part-III and for any other purpose). Similarly Article 227 of the Constitution of India provides the power of superintendence over all Courts and Tribunals throughout the territories in relation to which any High Court exercises its jurisdiction. The powers of the High Court under Articles 226 and 227 of the Constitution of India cannot be curtailed under any circumstance, as the power flows from the Constitution itself. No statutory bar can affect the power of the High Court under Articles 226 and 227 of the Constitution of India.

63. Despite such wide and untrammelled powers, without any circumscription by external restrictions, the Courts have evolved certain self-imposed limits while exercising these powers. The High Courts, normally, would not go beyond justified inhibitions under any Statute except where there is a complete jettisoning of rule of law or under exceptional circumstances which demand



timely judicial interdict. This inhibition is basically ordained, keeping in mind that there is a national weal behind any valid piece of Legislation incorporating and inhering in itself the social objective behind any Legislation. Though, no limitations or fetters have been put on the powers of the High Court under Articles 226 and 227 of the Constitution of India, as the High Courts perform as sentinel on the qui-vive, but such power is not to be exercised casually and without coming to the conclusion that non-exercise of such power would lead to positive injustice. Times without number, it has been held by the High Courts that only under condition of a person establishing that substantial injustice has or is likely to ensue, such extraordinary powers can be exercised. It needs no adumbration by this date that the plenary powers of the High Court have only to be exercised in the interest of justice.

64. Thus, an order of release may be passed under Article 226/227 of the Constitution of India, even pending confiscation proceedings, but only when it is established before the Court that the procedure prescribed and the law in that regard has been completely flouted and that there is complete violation of the procedure prescribed for confiscation, viz., notice to the offender before confiscation, allowing him opportunity of giving written representation and affording hearing on the issue to him and that such injustice cannot be



remedied without the exercise of the extraordinary power.

65. Needless to state that under Article 226 of the Constitution of India, the Court will not go into the disputed question of facts.

66. Thus, the powers directing for release of the vehicles or goods, during the pendency of the confiscation, can only be sparingly exercised under monstrous situations and circumstances when injustice occurs because of non-fulfillment of the conditions for confiscation.”

Having heard learned Counsel for the parties, it appears that the proposal/report for initiation of confiscation proceeding, under Section 58 (1) of the Act, has been transmitted by the Superintendent of Police, vide letter no. 410, dated 13.02.2020, whereas the provisions under the Act mandates transmission of the proposal/report by the seizing or detaining authority and it also does not appear from the order of the Collector that whether the petitioner has been made accused in this case or not. It further appears that the present writ application was registered on 31.01.2020, the matter was heard on 06.02.2020 and after seeking adjournment from this Court, the proposal was transmitted by the Superintendent of Police, leading to initiation of Confiscation Case No. 71 of 2020 on 15.02.2020, whereas the provisions under the



Act mandates transmission of the proposal/report without any reasonable delay.

However, since the confiscation proceeding has already been initiated, we are not inclined to interfere at this stage.

It is expected that the Respondent No. 2, the District Magistrate, East Champaran, at Motihari, shall conclude the proceeding of Confiscation Case No. 71/2020 within a period of six weeks from the date of receipt/production of a copy of this order, in accordance with law.

The petitioner is also expected to appear regularly and participate in the confiscation proceeding.

Accordingly, with the above observation and direction, the present writ application is disposed of.

Let a copy of this order be communicated to the District Magistrate, East Champaran, at Motihari, through fax, immediately.

(Dinesh Kumar Singh, J.)

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	03-03-2020
Transmission Date	N/A

