

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.379 of 2020

=====

Rajendra Yadav, Son of Late Been lal Yadav, Resident of Village- Hasanpur,
P.O.- Kankhudia, P.s.- Palasi, District- Araria.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department,
Govt. of Bihar, patna.
2. The District Magistrate, Araria.
3. The Superintendent of Police, Araria.
4. The S.H.O., Sikti Police Station, District- Araria.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Mrigendra Kumar
For the Respondent/s : Mr. Vivek Prasad (GP-7)

=====

CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH

and

HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH)

Date : 16-01-2020

Heard learned counsels for the parties.

The present writ application has been preferred for release of Hero Splendor Pro motorcycle of the petitioner bearing Registration No. BR37H0223, which has been seized in connection with Sikti P.S. Case No. 155 of 2019, registered for the offence 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 prayer as is contained in paragraph no.1 of the writ application, reads as follows:-

“1. That the instant application is being filed for issuance of an order/orders, writ/writs, direction/directions commanding the respondents



authority to release the Hero Splendor Pro Motorcycle bearing Registration No. BR 37H 0223, Chassis No. MBLHA10A3EHG73874 and Engine No. HA10ELEHG08966 belonging to the petitioner which has been seized by the police in connection with Sikti P.S. Case No. 155/2019 dated 12.09.2019 instituted for the alleged offence under Section 30(a) of the Bihar Prohibition and Excise Act, 2016, as contained in Annexure-1 to the writ application, pending in the Court of learned 2nd Addl. Sessions Judge-cum-Special Judge, Excise Act, Araria.”

The prosecution case, as per the written report of Madan Kumar, being the A.S.I., submitted to S.H.O., Sikti Police Station is to the effect that on 12.09.2019, during the course of patrolling, two motorcycles were intercepted and from the motorcycle of the petitioner, 18.9 litres of Indian Made Foreign Liquor were recovered, whereas from the other seized motorcycle, 18 litres of Indian Made Foreign Liquor were recovered, leading to registration of Sikti P.S. Case No. 155 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-2. It is further submitted that at the time of seizure, the vehicle in question was being driven by the son of the petitioner and the petitioner was not present on the spot. It is



further submitted that the vehicle in question is rotting under the open sky and till date confiscation proceeding has not been initiated, statement to that effect has been made in paragraph no.10 of the petition which reads as follows:-

“That no confiscation proceeding has been initiated by the competent authority.”

Mr. Vivek Prasad, learned G.P.-7 admits the submission of learned counsel for the petitioner that till date confiscation proceeding with regard to the vehicle in question has not been initiated.

Having heard learned counsels for the parties and considering their rival submissions, we are of the considered view that the FIR was lodged and seizure has been made by ASI of Police whereas Section 73(e) of the Act stipulates that the seizure cannot be made by an officer below the rank of Sub Inspector of Police. Hence, the very seizure appears to be dehors the provisions of the Act. Moreover, the confiscation proceeding has not been initiated with regard to the vehicle in question, and since about two lakh cases are pending under Excise Act in the State of Bihar, hence there is no likelihood of trial being concluded in near future. Moreover, the vehicle in question, at best, is only for the purpose of producing the same as material exhibit during trial.



In the facts and circumstances of the present case, no useful purpose will be served in allowing the vehicle to rot under open sky leading to a complete waste of public money. Keeping the vehicle in such condition and allowing to reduce it into junk, would ultimately result into waste of public money has been deprecated by the Supreme Court in the case of *Sunderbhai Ambalal Desai Vs. State of Gujrat and other* analogous cases (2002) 10 SCC 283 and in the case of *General Insurance Council and Ors. Vs. State of Andhara Pradesh and Ors.* (2010) 6 Supreme Court Cases 768.

Moreover, learned counsel for the respondents has no objection to the provisional release of the vehicle in question, we direct that the same be released provisionally till the conclusion of the trial, if any, on the following conditions to the satisfaction of learned Additional District and Sessions Judge-cum-Special Judge (Excise), Araria:

(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 A.D.J.-cum-



Special Judge, Excise, Araria 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.

It is made clear that we have not expressed any opinion with regard to the merits of this case 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)

Amrendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	20.01.2020
Transmission Date	

