

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.40 of 2020

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Shyam Babu Yadav, aged about 18 years, male, Son of Lalan Yadav, Resident of Village- Neauri Ghat, P.S.- Singhia, District- Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Excise and Prohibition, Government of Bihar, Old Secretariat, Patna.
2. The District Magistrate, Samastipur.
3. The Superintendent of Police, Samastipur.
4. The Superintendent of Excise, Samastipur.
5. The Officer-in-Charge, Singhia P.S., Samastipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Shanti Bhushan Singh
For the Respondent/s : Mr. Vivek Prasad (GP7)

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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

Heard Mr. Shanti Bhushan Singh, learned counsel for the petitioner and Mr. Vivek Prasad, learned G.P. 7.

The present writ application has been filed for release of TVS Apache motorcycle bearing registration no. BR33-AB-1455, which has been seized in connection with Singhia P.S. Case No. 62 of 2019, registered for the offence punishable under Section 30(a) 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 as prayed for in paragraph no. 1 of the writ petition reads as follows:-



“i. For direction to the respondents to release the vehicle Motorcycle bearing Registration no. BR33-AB-1455 in the favour of the petitioner seized in connection with Singhia P.S. Case No. 62 of 2019 and GR No. 635 of 2019.

ii. For any other relief / relieves which is entitled to the petitioner in accordance with law.”

The prosecution case got initiated on the basis of the self statement of Pankaj Kumar, S.I. -cum-Station House Officer, Singhia P.S. recorded on 26.05.2019 at 6.20 A.M., to the effect that on 25.05.2019 at 12.30 A.M., two persons travelling on a motorcycle were intercepted and from the motorcycle in question, 5.250 liters of Indian Made Foreign Liquor was recovered, leading to registration of Singhia P.S. Case No. 62 of 2019 on 26.05.2019.

It is submitted by learned counsel for the petitioner that petitioner is the registered owner of the vehicle in question. The certificate of registration of the vehicle in question has been brought on record, as Annexure- 3 to the writ petition. He further submits that the vehicle in question is rotting under the open sky and keeping the vehicle in such condition and allowing it to reduce into a junk would ultimately result into waste of public money. Moreover petitioner is ready to produce the vehicle in question as



and when required by the Court below or by the confiscation authority. It is further submitted that confiscation proceeding has not been initiated till date and statement to that effect has been made in paragraph no. 13 of the writ petition. Hence , a prayer has been made for release of the vehicle in question.

Mr. Vivek Prasad, learned G.P. 7 relying on the counter affidavit filed on 04.02.2020 on behalf of the respondent nos. 1, 2 & 4 submits that the Superintendent of Police, Samastipur transmitted the proposal for initiation of confiscation under Section 58(1) of the Act to the District Magistrate, Samastipur on 26.08.2019 and consequently, the confiscation case, being Confiscation (Excise) Case No. 505 of 2019 has been initiated in which the next date fixed is 04.02.2020.

Considering the fact that confiscation proceeding has already been initiated and in view of the ratio laid down by the Full Bench of this Court in the case of Baleshwar Roy and Ors. Vs. The State of Bihar and Ors., reported in 2018 (4) PLJR 970 wherein it has been held that on initiation of confiscation proceeding, this Court can interfere and exercise jurisdiction under Article 226 of the Constitution of India only in monstrous condition. Paragraph nos. 62 to 66 of the said judgment read 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 Statue 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.”

Hence we are not inclined to interfere at this stage.

However, it is expected from the respondent no. 2 i.e. District Magistrate, Samastipur to conclude the



confiscation proceedings in Confiscation (Excise) Case No. 505 of 2019 expeditiously, preferably within a period of six weeks from the date of receipt / production of a copy of this order in accordance with law after giving due opportunity of hearing to all the affected persons / parties. It is also expected from the petitioner to appear regularly in the aforementioned confiscation case.

If the confiscation proceeding is not concluded within the said period without any laches on the part of the petitioner, the petitioner shall be at liberty to move this court for the release of the vehicle in question.

Accordingly, the writ application is disposed of.

(Dinesh Kumar Singh, J)

(Anil Kumar Sinha, J)

praful/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03-03-2020
Transmission Date	NA

