

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.390 of 2020

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Chandan Kumar S/o Baldev Chaudhary Resident of Village- Sabal Bigha,
P.s.- Sikandra, Distt.- Jamui

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Excise Department, Govt. of Bihar, Old Secretariat, Patna
2. The District Magistrate Jamui
3. The Superintendent of Police Jamui
4. The S.H.O./Officer-in-Charge P.s.- Sikandra, Distt.- Jamui

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar Mishra, Adv.
For the Respondent/s	:	Mr. Vivek Prasad, G.P.- 7
		Ms. Roona, 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 : 14-02-2020

Heard Mr. Sanjay Kumar Mishra, learned counsel for the petitioner and Ms. Roona, learned AC to G.P.-7 for the respondent-State.

The present application has been filed for release of Hero Honda Splendor motorcycle of the petitioner, bearing



registration no. BR-27A-9021, which was seized in connection with Sikandra P.S. Case No. 239 of 2019, registered for the offences under Sections 30(a)(g) and 32(2) 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 Dhruv Kumar, S.I. of Police, submitted to the Station House Officer, Sikandara Police Station is to the effect that on 30.08.2019, the motorcycle of the petitioner was intercepted and from the same, 20 litres of country made liquor was recovered and three accused persons were apprehended, who disclosed their name as Golu Kumar, the driver, Sunil Kumar and Md. Irsad, the pillion riders, leading to registration of Sikandara P.S. Case No. 239 of 2019.

It is submitted by learned counsel for the petitioner that the petitioner is the registered owner of the motorcycle in question and certificate of registration of the vehicle in question has been brought on record, as Annexure-2 to the writ application. It is further submitted that the petitioner has not been named in the FIR. The FIR has been registered against all the three apprehended accused persons. It is further submitted that the motorcycle in question is rotting under the open sky.



Moreover, the petitioner has not been served any notice with regard to initiation of confiscation proceeding.

A counter affidavit has been filed on behalf of respondent no.2, the District Magistrate, Jamui which suggests that confiscation proceeding, vide Confiscation Case No. 58 of 2019 has been initiated, but it appears from the notice issued on 23.10.2019 that the confiscation authority had no knowledge about the ownership of the vehicle in question.

Ms. Roona, learned AC to GP-7 submits that confiscation proceeding has already been initiated. However, she is not controverting the fact that the petitioner is not named in the FIR and notice has been issued by the Collector in the confiscation proceeding against the owner of the vehicle in question without specific name of the owner.

Considering the rival submission of the parties, usually we do not interfere when the confiscation proceeding is initiated, but in the present case, we find that the report, under Section 58(1) of the Act, has been transmitted by the Superintendent of Police on the recommendation of the investigating officer, which is contrary to the provisions of Section 58(1) of the Act, which suggests the transmission of the report, if anything is liable to be confiscated under Section 56 of



the Act, will be done by the detaining or seizing authority. Even then, the Superintendent of Police, till the submission of the report, was not aware about the actual owner of the vehicle in question and mechanically, the Collector issued notice to the owner of the vehicle in question without specifying the name of the owner, which is not only unreasonable but it appears gross lapse on the part of the Collector rank officer to conduct confiscation proceeding, in such a manner leading to the serious civil consequences. In the circumstances, we are constrained to direct for release of the vehicle in question provisionally till the conclusion of the trial/confiscation case no. 58 of 2019, on the following conditions to the satisfaction of Collector-cum-District Magistrate, Jamui:

(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 Collector-cum-District Magistrate, Jamui 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	19.03.2020
Transmission Date	

