

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.11691 of 2021

=====

Randhir Kumar Son of Mahesh Raut Resident of Mohalla- Ward No. 5,
Chakmahila, Police Station- Sitamarhi, District- Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Excise Department, Government of Bihar, Patna.
3. The Excise Commissioner Bihar, Patna.
4. The District Magistrate Cum Collector, Sitamarhi.
5. The Superintendent of Police, Sitamarhi.
6. The Station House Officer, Sursand Police Station, Sitamarhi.

... .. Respondent/s

=====

(The proceedings of the Court are being conducted by Hon'ble the Chief Justice /Hon'ble Judges through Video Conferencing from their residential offices/residences. Also, the Advocates and the Staffs joined the proceedings through Video Conferencing from their residences /offices.)

Appearance :

For the Petitioner/s : Mr.Tabish Sharfuddin, Adv
For the Respondent/s : Mr. Kumar Manish SC-5

=====

CORAM: HONOURABLE THE CHIEF JUSTICE
and
HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE S. KUMAR)

Date : 19-07-2021

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s):-

“(i) Issuance of appropriate writ or writs in the nature of Mandamus directing the concerned respondents to release the petitioner's Vehicle – Classic 350 ABS, Royal Enfield (Two Wheeler) bearing registration number-BR30 W 3295, Chasis No. ME3U3S5C2KA420010, Engine No. U3S5C2KA399342, which has been seized by the said respondents in connection with Sursand Police Station, Case Number-39 of 2021 dated 25.01.2021, registered for offences under Section 37(b)(c) and Section 30(a) of Bihar Prohibition and Excise Act, 2018, lying under open sky in



thana premises under the control of the Excise Department awaiting confiscation and is decaying fast.

(ii) Issuance of writ or writs, order/orders, direction/directions directing the respondent authorities to say the confiscation proceedings if initiated which is pending before the respondent no. 4 till the final adjudication of this case.

(iii) For issuance of further direction to respondent authority to take final decision with regard to release the vehicle.

(iv) Issuance of order or direction to the appropriate authority to positively conclude the confiscation proceeding within reasonable time.

(v) Issuance of order or direction directing the respondent Authorities to release the cash which were seized from the conscious possession of the petitioner.”

Learned counsel for the petitioner submits that 1.300 litre of two Tuborg Nepali Beer was recovered from the plastic bag hanging in the handle of the motorcycle. It is further submitted by learned counsel for the petitioner that no confiscation proceeding has been initiated as yet and statement in this regard has been made in para-9 of his petition.

In view of the above, the writ petition is disposed of with a direction to the **Confiscating Authority/District Collector, Sitamarhi**, to immediately initiate the confiscation proceeding, if not already initiated, preferably within 15 days from the date of production/receipt of a copy of the order passed by this Court and conclude the confiscation proceeding within 90 days, from the date of filing of show cause failing which, he is directed to provisionally release the vehicle of petitioner after



due identification of ownership on production of ownership and registration papers with respect to vehicle in question in his name with two sureties (one local) to the extent of the value of the vehicle as indicated in the insurance document.

The petitioner while submitting the sureties shall also furnish the following affidavits/undertakings:

(i) That the petitioner shall not indulge in creating any third party right or interest in respect of the vehicle during the pendency of the confiscation proceeding and shall not alienate the vehicle during this period.

(ii) The petitioner shall furnish an undertaking to produce the vehicle before the confiscating authority as and when required.

(iii) Prior to release of the vehicle, a Panchanama would be prepared wherein the photograph of the vehicle shall be taken and will be certified by the petitioner and same shall be kept on record so that in future if so required, it may be used as a secondary evidence. The petitioner shall furnish an undertaking not to challenge the said Panchanama.

The release shall be allowed within a period of 14 days from the date of submission of the sureties and the undertakings as stated above, which would however be subject to finalization of the confiscation proceeding.

So far as cash of Rs. 16,930/- is concerned, as recovered and seized cash is not liable for confiscation under section 56 of the Excise Act, bar of jurisdiction in confiscation under section



60 of the Excise Act is not applicable and the concerned Special Court (Excise) has jurisdiction to pass order for release of cash during pendency of trial.

The writ petition is disposed of with liberty to petitioner to file a petition before the Special Court (Excise) under section 451 of Cr.P.C. and if any such petition is filed for release of cash, the Special Court (Excise) shall dispose of such petition within 30 days from its filing.

(Sanjay Karol, CJ)

(S. Kumar, J)

ranjan/-

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

