

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15147 of 2021

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Md. Haider Son of Mohammad Sahid Resident of Village and P.O.- Bahilwara
Rupnath, P.S.- Saraiya, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Excise Department, Government of Bihar, Patna.
2. The District Magistrate-cum- Collector Vaishali at Hajipur, District- Vaishali at Hajipur.
3. The Superintendent of Police Vaishali at Hajipur, District- Vaishali at Hajipur.
4. The Excise Superintendent Vaishali at Hajipur, District- Vaishali at Hajipur.
5. The Station Head Officer Vaishali Police Station, District- Vaishali at Hajipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Arjun Prasad, Advocate

For the Respondent/s : Mr.Vikash Kumar (SC-11)

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE S. KUMAR

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE S. KUMAR)

(The proceedings of the Court are being conducted through Video Conferencing and the Advocates joined the proceedings through Video Conferencing from their residence.)

Date : 09-09-2021

Heard learned counsel for the petitioner and

learned counsel for the State.

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

“ (I) For issuance of an appropriate writ in the nature of
MANDAMUS, commanding and directing the Respondent
Authorities to release the Glamour Motorcycle bearing Reg.
No. BR-06BB-7856, Chassis No. MBLJ AO6AMGGL00375
and Engine No. JA06EJGGL00445 in favour of the petitioner
which has been recovered / seized by the Respondent No.5 in

connection with Vaishali P.S. Case No.175 of 2021 dated 12.05.2021 registered for the offences under Sections 272, 273, 414 of the Indian Penal Code and 30(a) of the Bihar Prohibition and Excise Act, 2016 on the ground that the said motorcycle of the petitioner was stolen by some unknown miscreants on 21.04.2021 for which Vaishali P.S. Case No.158 of 2021 dated 02.05.2021 was instituted on the basis of written report filed by the petitioner for the offences under Section 379 of the Indian Penal Code as also on the ground that the vehicle in question is kept in the open sky of the campus of the Police Station which causes fast natural decay of the vehicle of the petitioner .

(II) For issuance any other appropriate writ/writs, order orders, direction/directions for which the writ petitioner would be found entitled under the facts and circumstances of the case.”

Allegation is recovery of 20.625 liters Blue Stroke Whisky from the motorcycle of the petitioner and miscreants accompanying said vehicle tried to flee away but on being chased, one of the miscreants was apprehended and rest of the accused managed to flee away and thereafter illicit liquor and motorcycle were seized for which FIR being Vaishali P.S. Case No. 175 of 2021 dated 12.05.2021 was registered for the offence punishable under Sections 272, 273, 414 of the Indian Penal Code and Section 30(a) of Bihar Prohibition and Excise Act, 2016 and since illicit liquor was recovered from motorcycle same became liable for confiscation under section 56 of the Excise Act.

Petitioner claims to be the owner of the vehicle and states that his vehicle was stolen by unknown thieves on 21.04.2021 for which Vaishali P.S. Case No. 158 of 2021 dated 02.05.2021 was registered for the offences under Section 379 of the Indian Penal Code and his stolen vehicle was being misused by the accused persons for trade of illicit liquor and he is nowhere concerned with said crime and seized vehicle may be released in his favour. Learned counsel for the petitioner further submits that confiscation proceeding has not been initiated as yet. Statement in this regard has been made in paragraph no. 12 of his petition.

In facts and circumstances of the present case when the vehicle of the petitioner was stolen and same was being misused by accused in trade of illicit liquor for which petitioner cannot be faulted and in view of the above, the writ petition is disposed of with a direction to the concerned Confiscating Authority/District Collector, 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.

With said observations, this writ petition is disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

Rajiv/-

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