

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15405 of 2021

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Awdhesh Kumar Tiwari @ Awdhesh Tiwari son of Kamal Tiwari resident of
Village- 166 Jyay, P.O. and P.S. Siwan Muffasil, District- Siwan

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Excise Department Govt. of Bihar
2. The District Magistrate, Siwan
3. The Sub Divisional Magistrate, Siwan Sadar Dist. Siwan.
4. The Officer in Charge, Mairwa Police Station, Siwan.

... .. Respondent/s

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(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.Md. Aslam Ansari, Adv
For the Respondent/s : Mr.Vivek Prasad (GP7)

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

Date : 14-09-2021

Heard learned counsel for the parties.

Petitioner has prayed for the following relief:-

“(A) A writ in the nature of mandamus for commanding and directing the respondents concerned to release passion Pro (motorcycle) bearing registration no. BR-29N-2271, Engine No. HA10ENDGF-09512, Chesis No. MBLHA10AWDGF03453, model no. 2013 in favour of the petitioner as he is rightful owner of the said vehicle which has been seized in connection with Mairwa PS Case No. 201/2019 dated 25.07.2019 registered u/s 30(a) of Bihar Prohibition & Excise Act, 2016.”

It is submitted on behalf of petitioner that he is the owner of the seized vehicle which was stolen by unknown thieves on 20.06.2019 for which he has lodged FIR giving rise to Hussainganj P.S Case No. 180 of 2019 for the offence punishable under Section 379 of IPC, and same was being used by the unknown miscreants for illegal activity.

Petitioner claims to be owner of the seized vehicle and same was stolen on 20.06.2019 for which he had earlier instituted a case. It is further submitted that no illicit liquor was recovered from the vehicle and same was seized on suspicion only. Confiscation proceeding has been initiated by the Sub-divisional Magistrate, Siwan, Sadar, being Excise Case No. 361 of 2019-20, in which petitioner appeared and filed his show cause for dropping the confiscation proceeding and also to release his seized motorcycle but no order was passed.

In the facts and circumstances of the case, **Sub-divisional Magistrate, Siwan, Sadar,/Confiscating Officer, Siwan**, is directed to provisionally release the vehicle of petitioner after due identification of ownership of the vehicle which was stolen and subsequently recovered and seized by the police in excise case 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.

With said observations and direction, this writ petition
is disposed of.

(Sanjay Karol, CJ)

(S. Kumar, J)

ranjan/-

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