

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15560 of 2021

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Sudishta Baitha S/o Ram Pavitra Baitha R/o Vill.- Bijdhari, P.S.- Keshariya,
Dist.- East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar Through Principal Secretary, Department of Excise and Prohibition, Govt. of Bihar.
2. The District Magistrate East Champaran at Motihari.
3. The Police Superintendent East Champaran at Motihari.
4. The S.H.O. Dhaka E. Champaran at Dhaka.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr.Dhannjay Kumar No 2, Advocate
For the Respondent/s	:	Mr. Kumar Manish, SC 5
		Mr. Prashant Kumar, Ac To Sc 5

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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 : 16-09-2021

Heard learned counsel for the parties.

Petitioner has prayed for following relief:-

“(i) For issuance of an appropriate writ in nature of mandamus direction the respondent to release the vehicle Hero Glamour Drum Motor Cycle of the petitioner bearing registration BR05S-6647 Chassis No.MBLJA06AMGGA26915 Engine No. JA06EJGGAO9870 was seized by A.S.I. in connection with Dhaka P.S. Case No. 352/20 arising out of in confiscation proceeding 316/21 pending before respondent no.2 registered u/s 414,34 of I.P.C. & u/s 30(a) of Bihar Prohibition & Excise Act 2016.”

Allegation is recovery of 33 litre of illicit country

made Neplai wine from the motorcycle and miscreants accompanying said vehicle tried to flee away but on being chased, three of them were apprehended and thereafter illicit liquor and motorcycle were seized for which FIR Dhaka P.S. Case No. 352/20 dated 05.09.2020 was registered for the offence punishable under Section 30(a) of the Bihar Prohibition and Excise Act, 2018 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 11.06.2020 for which he has lodged FIR giving rise to Keshariya P.S Case No. 235/20 for the offence punishable under Section 379 of IPC and his stolen vehicle was being misused by the accused 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 being confiscation caase no.316/21 against his seized motorcycle is going on which he came to know through public notice.

Petitioner claims to be owner of the seized vehicle and same was stolen on 11.06.2020 for which he had earlier

instituted a case as such, petitioner cannot be held to be responsible for transportation of illicit liquor.

In the facts and circumstances of the case, the District Magistrate/Confiscating officer East Champaran at Motihari 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)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	17.09.2021
Transmission Date	NA