

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2983 of 2021

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Mahesh Sah son of Thag Sah Resident of village - Dhanhar Dihuli, P.S. -
Ramgarhwa, District- East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the principal secretary, Excise Department,
Government of Bihar, Patna.
2. The Divisional Commissioner, Tirhut Commissionery Muzaffarpur.
3. The District Magistrate cum collector, East Champaran at Motihari.
4. The Superintendent of police, East Champaran at Motihari.
5. The S.H.O., Chhauradano (Mahuawa) Police Station, District- East
Champaran at Motihari.
6. The Investigating officer of Chhauradano (Mahuawa) P.S. Case no. 268/
2019, District - East Champaran at Motihari.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Ajay Kumar Singh, Adv
For the Respondent/s : Mr. Ashutosh Ranjan Pandey AAG-15

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

Date : 26-03-2021

Heard learned counsel for the parties.

Petitioner has prayed for the following relief:-

“For issuance of writ in the nature of Mandamus
or any other appropriate writ (s), order(s), direction(s) to the
respondents to release the Hero M Splendor Motorcycle
bearing Registration No. BR05Y1246 Engine No.
HA10AGHHM23282, Chasis No.
MBLHAR074HHM19631, which has been seized in
connection with Chhauradano (Mahuawa) P.S. Case No.
268/2019 dated 4.8.2019 for the offences under section
30(a) of the Bihar Prohibition and 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 01.07.2019 for which he has lodged FIR giving rise to Ramgarhwa P.S Case No. 126 of 2019 for the offence punishable under Section 379 of IPC, and same was being used by the miscreants for transportation of illicit liquor and 111 litres of Nepali Country Made Liquor was recovered by the police from said stolen motorcycle giving rise to Chhauradano (Mahuawa) P.S. Case No. 268 of 2019 dated 04.08.2019 for the offence punishable under Section 30(a) of the Bihar Prohibition and Excise Act, 2016, and the culprits fled away leaving the motorcycle which was seized by the police.

Petitioner claims to be owner of the seized vehicle and same was stolen on 01.07.2019 for which he had earlier instituted a case as such, petitioner cannot be held to be responsible for transportation of illicit liquor, however, since the vehicle was used for transportation of illicit liquor same is liable for confiscation and confiscation proceeding has been initiated by the District Collector, East Champaran at Motihari, in which petitioner appeared and filed his show cause for dropping the confiscation proceeding and also release of his seized motorcycle but no order was passed.

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)

ranjan/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	05.04.2021
Transmission Date	NA

