

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18414 of 2021

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Santosh Kumar S/o Sri Rambabu Prasad Yadav R/o Village - Churiharwa,
Rampur, P.S.- Chiraiya, Distt. - East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department, Bihar, Patna.
2. The District Magistrate, East Champaran.
3. The Presiding Officer Cum Sub-Divisional Public Grievance Redressal Officer, Raxaul, East Champaran.
4. The Superintendent of Police, East Champaran.
5. The Station House Officer (SHO), Adapur Police Station, District - East Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Jai Prakash Verma, Advocate
For the Respondent/s : Mr.Vikash Kumar (S.C.11)

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

Date : 23-12-2021

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s).

“That this is an application for issuance of an appropriate writ or writs, order or orders, direction or directions in the nature of mandamus for commanding and directing to the respondent authorities to released Two wheeler Super Splendor Motorcycle of the petitioner bearing registration no. BR05AC-7873, Chasis no. MBLJAR032J9L19395, Engine no. JA05EGJ9L18767, which has been seized on 30.09.2020 by S.I. of Adapur Police Station, Distt. East Champaran in connection with Adapur P.S. Case No. 325 of 2020 dated 30.09.2020 for the offence u/s 414 of the Indian Penal Code and u/s 30(a) of the Bihar Prohibition and Excise Act, 2016. And for the

other necessary relief or reliefs for which the petitioners are entitled to in accordance with law.”

It is submitted that 30 litres of Country made Chulai liquor was recovered from the motorcycle of the petitioner, which was parked in Verandah of the house of petitioner, which was stolen on 25.08.2020 by some unknown persons, for which he has lodged FIR on 26.08.2020 giving rise to Chiraiya P.S. Case No. 255/2020 for the offence punishable under Section 379 of IPC, and same was being used by the miscreants for transportation of illicit liquor which was seized by the police on 30.09.2020.

Since seized vehicle was stolen by some miscreants, 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.

Petitioner claims to be owner of the seized vehicle and same was stolen on 25.08.2020 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 in which petitioner can take a plea that he is not responsible of being indulged in carrying illicit liquor in his vehicle as same

was stolen for which he had already instituted an FIR.

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

Rajiv/veena-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	