

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.20329 of 2021

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Santosh Kumar Singh S/o-Yadunath Singh Permanent Resident of Vill-Tali Buzurg, P.O.-Tali, P.S.-Guthani, District-Siwan.

... .. Petitioner/s

Versus

1. The State of Bihar through The Principal Secretary Excise and Prohibition Department, Bihar, Patna.
2. The District Magistrate-Cum-Collector, Siwan.
3. The Superintendent of Police, Siwan
4. The Superintendent of Excise, Siwan.
5. The S.H.O./ Officer Incharge, P.S.-Ziradei, District-Siwan.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Prabhakar Singh, Advocate
For the Respondent/s : Mr.Lalit Kishore (AG)

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

Date : 23-12-2021

Heard learned counsel for the parties.

Petitioner has prayed for the following relief(s).

“For a direction to the respondent authorities to release the vehicle Hero Splender Pro Motorcycle bearing Registration no. BR-29N-3858, Engine no.- HA103LDHF233253, Chasis no.- MBLHA10ASDHF67315 IN FAVOUR OF THE Petitioner who is owner of the motorcycle, which has been seized in Ziradei P.S. Case No. 33/19 dated 03/04/19 lodged under section 272/273 of the I.P.C. and under section 30(a) Bihar Excise and Prohibition Act, 2016 in which confiscation proceeding is pending for which prior to the present case petitioner lodged F.I.R. bearing Bankata (District-Deoria, U.P.) P.S. Case No. 40/19 on 19.03.019 under section 379 of



I.P.C. after theft of his motorcycle after which it was caught/seized in the Ziradei Police Station under the excise act, accordingly petitioner filed release petition in the competent court at Deoria, U.P. but the respondent authorities informed that it has been seized in Excise case for which confiscation proceeding is pending and for any other relief/s for which petitioner is legally entitled too.”

It is submitted that 16 litres of Country made liquor was recovered from the stolen motorcycle of the petitioner, for which he has already lodged FIR on 19.03.2019 giving rise to Bankata (District-Deoria, U.P.) P.S. Case No. 40 of 2019 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 03.04.2019.

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 03.03.2019 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 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, 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)

K.C.Jha/-

AFR/NAFR	
CAV DATE	
Uploading Date	24.12.2021
Transmission Date	

