

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.46 of 2022

Keshav Kumar Son of Harendra Thakur Resident of Village- Andauli, Ward
No. 01, P.S.- Choraut, District- Sitamarhi- 847308.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department,
Govt. of Bihar, Patna.
2. The District Magistrate, Sitamarhi.
3. The Superintendent of Police, Sitamarhi.
4. The Deputy Superintendent of Police, Sitamarhi.
5. The Officer-in-Charge, Choraut Police Station, District Sitamarhi.
6. The Excise Commissioner, Sitamarhi.
7. The Investigating Officer of Choraut P.S. Case No. 127/2021.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Subodh Kumar, Advocate
For the Respondent/s : Mr.Vikash Kumar (Sc11)

**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 : 01-04-2022

Heard learned counsel for the parties.

Petitioner has prayed for following relief:-

(i) For issuance of writ in the nature of mandamus commanding and directing the respondents authority to release the vehicle Royal Enfield Motorcycle bearing Registration No. BR30S-8422, Chassis No. ME3U355C1JA610836, Engine No. U355C1JA282802 which has been seized in connection with Choraut P.S. Case No. 127/2021 registered under Sections 414/34 of the Indian Penal Code read with section 30(a) of the Bihar Prohibition & Excise Act, 2018 in favour of the petitioner who is owner of the vehicle because till date confiscation proceeding has not been initiated.

(ii) And for any other relief/reliefs for which the petitioner is found to be entitled in the eye of law.

Allegation is recovery of 375 ml. of illicit liquor from waist of the petitioner while he along with another co-accused were travelling on motorcycle.

Petitioner claims to be the owner of the said motorcycle.

It is further submitted that a meagre quantity of 375 ml. of liquor has been recovered from the vehicle, as such, it cannot be construed that the vehicle was used for transporting/carrying illicit liquor.

In the facts and circumstances of the case, **the District Magistrate/Confiscating Officer, Sitamarhi** is directed to initiate confiscation proceeding, if already not initiated, and provisionally release the vehicle of petitioner after due identification of ownership of the vehicle 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.

In view of amendment in the Excise Act, and same being applicable in pending cases, it shall be open for the petitioner to get his/her vehicle released after making payment of penalty in terms of Rule 12(A) inserted by amending Bihar Prohibition and Excise Rules, 2021.

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

(Sanjay Karol, CJ)

(S. Kumar, J)

Sanjay/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.04.2022
Transmission Date	NA