

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No. 243 of 2024

Arising Out of PS. Case No.-322 Year-2023 Thana- SHAHPUR PATORI District- Samastipur

Manish Kumar Sharma S/O- Vishwanath Sharma R/O- Village- Gorigama,
P.O- Gorigama, P.S.- Mahnar, Dist.- Vaishali.

... .. Petitioner/S

Versus

1. The State Of Bihar Through The Home Secretary, Govt. Of Bihar, Patna.
2. The District Magistrate, Samastipur.
3. The Superintendent Of Police, Samastipur
4. The S.H.O Of Patori P.S., Dist.- Samastipur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Kumar Vikram, Adv., Mr. Apurva Kumar, Adv.
For the State	:	Mr. Standing Counsel-10

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

3 27-03-2025 The petitioner is the owner of a Motorcycle bearing Registration No. BR31-AR-5918, Engine No.-AE8LM2426879, Chesis No.- MD634AE83M2L27422. The said vehicle was seized in connection with Patori P.S. Case No. 322 of 2023, dated 10th May, 2023, on the allegation that the rider of the vehicle was driving the Motorcycle in drunken condition and a firearm was recovered from his possession.

2. It is contended on behalf of the petitioner that the petitioner is the owner of the said Motorcycle. The petitioner permitted the accused being his friend to drive the said Motorcycle, but he had no knowledge that his friend was in



drunken condition and he had in possession of a firearm, which was used by him.

3. Under such circumstances, the petitioner has filed the instant criminal writ petition for a direction in the nature of mandamus upon the respondents authority to release the Motorcycle bearing Registration No. BR31-AR-5918, Engine No.-AE8LM2426879, Chesis No.- MD634AE83M2L27422 in favour of the petitioner as he has all valid documents in his name and he has not been made an accused in connection with Patori P.S. Case No. 322 of 2023, dated 10th May, 2023.

Prayer for relief is as follows:-

“ 1. (ii) Further to direct the respondent authorities to release the vehicle bearing Registration No. BR31-AR-5918, Engine No.- AE8LM2426879, Chesis No.- MD634AE83M2L27422 in favour of the petitioner as he has all valid documents in his name and he has not been made accused in Patori P.S. Case No. 322/23, dated 10/5/23.”

4. It is submitted by the learned Advocate of the State/respondents, on the other hand, that the petitioner was driving the vehicle in drunken condition. When he was



apprehended, a firearm was recovered from his possession and the Arresting Officer came to know that the accused used the said firearm for committing an offence under Section 27 of the Arms Act.

5. Moreover, the learned counsel for the respondents submits that the vehicle was seized on 10th May, 2023.

6. Learned counsel for the respondents is required to gather information as to whether a confiscation proceeding has been initiated in respect of the said vehicle.

7. On the contrary, learned counsel for the petitioner submits that the seized vehicle being a Motorcycle, the same is not liable for confiscation under Section 56 of the Prohibition and Excise Act, as such power of jurisdiction in confiscation under Section 60 of the Prohibition and Excise Act is not applicable and the Special Judge, Excise Court has jurisdiction to pass order for release of the said vehicle during the pendency of the trial.

8. There is only one disturbing feature in the instant writ petition that the petitioner has filed the instant criminal writ petition against an order dated 12th October, 2023, passed by the learned Special Judge, Excise Act-II, Samastipur.

9. It is needless to say that against a judicial order writ



petition is not maintainable and if the petitioner is aggrieved, he had the liberty to file an application under Sections 397 and 401 of the Cr.P.C.

10. Be that as it may, it appears that the petitioner has filed the instant application also under Article 227 of the Constitution of India which empowers this Court to have the power of superintendence over the Courts Subordinate to it. Therefore, applying the provision under Article 227 of the Constitution of India, I have examined the impugned order.

11. In my considered opinion, the learned Special Judge did not consider the provision of Sections 451 and 452 of the Cr.P.C. as well as the decisions rendered by the Hon'ble Supreme Court in *Sunderbhai Ambalal Desai Vs. State of Gujarat*, reported in (2002) 10 SCC 283 and *General Insurance Council and Others Vs. State of Andhra Pradesh and Orthers*, reported in (2010) 6 SCC 768.

12. In view of such circumstances, the petitioner would be at liberty to file a fresh application before the Special Court, Excise under Section 451 of the Cr.P.C. and if such petition is filed for release of the vehicle, the Special Court, Excise shall dispose of such petition within 30 days from the date of filing of such application.



13. I do not find any reason to quash the F.I.R. as the petitioner is a third party in the F.I.R. and he cannot challenge the veracity of the F.I.R.

14. The instant order is passed only in respect of the relief no. (ii) of paragraph-1 of the writ petition.

15. With the above order, the instant criminal writ petition is disposed of.

(Bibek Chaudhuri, J)

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