
Mukesh Kumar Singh Vs State Of Bihar And Ors

Civil Writ Jurisdiction Case No. 3296 Of 2020

Court: Patna High Court

Date of Decision: Feb. 27, 2020

Acts Referred:

Indian Penal Code, 1860 " Section 279, 290, 427#Bihar Prohibition And Excise Act, 2016 " Section 37(c)

Hon'ble Judges: Dinesh Kumar Singh, J; Anil Kumar Sinha, J

Bench: Division Bench

Advocate: Umesh Kumar Singh, Vikash Kumar

Final Decision: Disposed Of

Judgement

At the very outset, learned counsel for the petitioner seeks permission to delete the prayer No.(ii) in the writ application. Permission is granted.

Heard Mr. Umesh Kumar Singh, learned counsel for the petitioner and learned A.C. to SC-11 for the respondents.

The present writ application has been filed for release of Truck, bearing Registration No. PB-08-M-9636, seized in connection with Kankarbagh P.S.

Case No. 1136 of 2018, registered for the offences punishable under Sections 279, 427 and 290 of Indian Penal code and Section 37 (c) of the Bihar

Prohibition and Excise Act, 2016, as amended by Amendment Act 8 of 2018 (hereinafter referred to as "the Act").

The prosecution case got initiated as per the written report of Abhaya Kumar submitted to the S.H.O., Kankarbagh Police Station, to the effect that

on 01.12.2018, the informant was going on his car, in the meantime, the truck bearing Registration No.PB-08M-9636 dashed the car of the informant

and it was found that the driver of the truck was in a drunken condition.

It is submitted on behalf of the petitioner that the vehicle, in question, has been kept in open space in the Kankarbagh Police Station campus and is

rotting into junk. It is also submitted that the petitioner is the registered owner of the vehicle in question and certificate of registration has been brought

on record as Annexures-2 to the writ petition. It is further submitted that seizure has not been made by police officer. It also appears that no

confiscation proceeding has been initiated but the petitioner has apprehension that the confiscation proceeding has been initiated.

It is submitted by learned Counsel for the respondents-State that it is a case of drunken driving, but the confiscation proceeding has not been initiated.

It is, thus, submitted by learned Counsel for the respondents that till conclusion of the confiscation proceedings, the vehicle, in question, may not be

released in favour of the petitioner.

Considering the fact that the confiscation proceeding has not been initiated, then under such circumstances, keeping the vehicle in seized condition, will

serve no useful purpose but only expose the vehicle to reduce it into junk under the open sky and the Court cannot shut its eyes to the same and

allow the vehicle to not only for the purpose that the vehicle could be produced as material exhibit during trial. Accordingly, we direct the release of

Truck bearing Registration No.PB-08M9636, provisionally till the conclusion of the trial or conclusion of confiscation proceeding to the satisfaction of

Additional District & Sessions Judge-cum-Special Judge, Patna, on the following conditions:

(I) The petitioner will produce the proof of valid certificate of registration/ownership in his favour including the insurance papers;

(II) The petitioner will furnish surety bond of Rs.2,00,000/- but not in the form of bank guarantee or cash, with two sureties of the like amount to the

satisfaction of the Special Court concerned or the confiscation authority, as the case may be;

(III) The petitioner shall give an undertaking on affidavit that he will not deal with the vehicle in question or alienate or encumber the same creating

any kind of adverse interest against the interest of the State during the pendency of the confiscation proceeding;

(IV) The petitioner will not use the vehicle for any illegal purpose and as and when required, he will produce the vehicle in question before the court or

authority concerned.

(V) At the time of release of the vehicle in question, the concerned court or authority shall get prepared photo copy of the vehicle in question duly

certified in presence of the petitioner;

(VI) Panchnama of the vehicle in question shall also be prepared and will be kept on record which may be used as secondary evidence and the

petitioner will furnish an affidavit incorporating therein an undertaking not to challenge the said photo copy or panchnama so prepared in his presence

at the time of release of the vehicle in question for use in course of the trial or confiscation proceeding as the case may be.

It is expected from the learned Court below to complete the whole exercise of release the vehicle in question within ten days of receipt/production of

a copy of this order.

It is made clear that we have not expressed any opinion with regard to the merits of the accusation or the ownership of the vehicle.

Accordingly, the writ application is disposed of with the terms indicated above.