

(2020) 07 PAT CK 0185

Patna High Court

Case No: Civil Writ Jurisdiction Case No. 583 Of 2020

Kanhaiya Prasad Singh

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

Date of Decision: July 9, 2020

Acts Referred:

- Bihar Prohibition And Excise Act, 2016 - Section 30(a), 56
- Indian Penal Code, 1860 - Section 379

Hon'ble Judges: Sanjay Karol, CJ; S. Kumar, J

Bench: Division Bench

Advocate: Apurva Kumar, Lalit Kishore

Final Decision: Disposed Of

Judgement

Heard learned counsel for the petitioner and learned counsel for the State.

Petitioner has prayed for the following relief:-

âœ(a) For directing the respondent authorities for release of the Hero Passion Pro Motorcycle bearing Registration No. BR 09N 2567(BR-09L-

5200) which has been seized by the police in Bakhari (Prihara O.P.) PS Case No. 106 of 2019, dt. 24.04.2019 registered for offence punishable under

section 30(A) of Bihar Prohibition & Excise Act, 2016.

(b) For directing the respondent authorities to take into consideration that the bike which has been seized by the authorities is stolen bike of the

petitioner bearing Reg no. BR 09L 5200 for which Sanha/FIR has already been registered way back in the year 2017 bearing no. Cheriya Bariyarpur

(Manjhaul) PS Case No. 121/17 and the same is being used for illicit purpose by the accused persons by altering the Reg. No. BR 09N 2567 and

same being arrested and bike being seized in connection with Bakhari (Prihara O.P.) PS Case No. 106 of 2019 dt. 24.04.19 registered for the offence

punishable under Section 30(A) of Bihar Prohibition & Excise Act, 2016 .

(c) For directing the respondents to fairly investigate the case and in the meantime release the bike in favour of present petitioner after proper

investigation and satisfaction of the police officials (paper pencil embarkment test).

(d) For directing the respondent authorities to henceforth release the vehicle of the petitioner which has wrongfully been seized in connection with

Bakhari PS Case No. 106/2019 dt. 24.4.19 under section 30(a) of Bihar Prohibition & Excise Act, 2016, GR No. 336/19, further to acknowledge the

plea of the petitioner that his vehicle has already been stolen way back, for which FIR bearing Manjhaul PS Case No. 121/2017 has been lodged on

8.8.17 u/s 379 of Penal Code.â€

Allegation is recovery of 12 litre of illicit liquor from the motorcycle for which FIR was lodged and illicit liquor and motorcycle were seized giving rise

to Bakhari (Prihara O.P.) PS Case No. 106 of 2019 dt. 24.04.19 registered for the offence punishable under Section 30(A) of Bihar Prohibition &

Excise Act, 2016.

As there is recovery of illicit liquor from the motorcycle as such same is liable for confiscation under Section 56 of the Bihar Prohibition & Excise Act,

2016.

It is submitted on behalf of petitioner that his motorcycle was stolen on 05.08.2017 for which he had lodged an FIR being Manjhaul PS Case No. 121

of 2017 on 08.08.2017 under section 379 of the Indian penal Code and the miscreants were misusing his stolen motorcycle in transportation of illicit

liquor and same was seized by the police in present case.

It is further submitted that petitioner is the owner of the motorcycle which was stolen away two years before for which he had already instituted a

case of theft of his motorcycle as contained in Annexure-1 and as such he is not concerned with the crime of trade of illicit liquor in which his stolen

motorcycle was misused by miscreants for which petitioner cannot be held responsible and as such his motorcycle may be provisionally release in his

favour during confiscation proceeding.

In the facts and circumstances of the present case, let the motorcycle of petitioner be provisionally released in his favour on due identification and

presentation of ownership papers shall release the vehicle provisionally till conclusion of confiscating proceeding on the production of document of

ownership and registration in his name with two sureties (one local) to the extent of the value of the vehicle as indicated in insurance document.

The petitioner while submitting the surety bond shall also furnish the following affidavit/undertakings:-

(i) That the vehicle in question has never been involved in any offence of similar nature in past and shall not indulge in similar offence in future.

(ii) That the petitioner shall not indulge in creating any third party right or interest in respect of the vehicle during the pendency of the proceeding and

shall not alienate the vehicle during this period.

(iii) The petitioner shall furnish an undertaking to produce the vehicle before the confiscating authority as and when required.

(iv) Prior to release the vehicle a Panchnama would be got prepared by the confiscating authority wherein the photograph of the vehicle shall be taken

and will be certified by the petitioner and the same shall be kept on record so that in future if so required it may be used as a secondary evidence. The

petitioner shall undertake not to challenge the said Panchanama in course of proceeding/trial.

The writ petition is disposed of.