

**(2020) 07 PAT CK 0217**

**Patna High Court**

**Case No:** Civil Writ Jurisdiction Case No. 3186 Of 2020

Naveen Kumar

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

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**Date of Decision:** July 9, 2020

**Acts Referred:**

- Bihar Prohibition And Excise Act, 2016 - Section 30(a), 56, 60
- Code Of Criminal Procedure, 1973 - Section 451

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

**Bench:** Division Bench

**Advocate:** Ranjeet Kumar Mishra, Vikash Kumar

**Final Decision:** Disposed Of

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### **Judgement**

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

Petitioner has prayed for following relief:-

i) This is an application for issuance of writ, order, direction including writ in the nature of mandamus commanding to the respondents for release the

Glamour Fi Motorcycle bearing ChassisNo.MBLJAW017K9D00777 and Engine No.JA06EGK9D00639, which has been seized in connection with

Laheri P.S. Case No.517/19 dated 19/12/19 under the Excise Act and the case has been instituted under Section 30(a) of the Bihar Prohibition and

Excise Amendment Act, 2016.

II) To issue an appropriate writ / order/ direction directing the respondents not to take any coercive measures against the petitioner.

III) And/or other writ order or direction may be issued in which the petitioner is entitled to.â€

Informant who is a police officer has alleged in his written complaint that during patrolling in the night, he found three persons riding a motorcycle and on seeing the police, they entered in a house from where they were apprehended and were found in a drunken condition and from the room, illicit foreign liquor was recovered and outside the room, two motorcycles were parked and thereafter illicit liquor and motorcycles were seized for which FIR was registered giving rise to Laheri P.S. Case No.517/19 dated 19/12/19 under Section 30(a) of the Bihar Prohibition and Excise Amendment Act, 2016.

It is submitted on behalf of petitioner that no illicit liquor has been recovered from the seized vehicle which is apparent from the FIR as well as seizure memo as such seized vehicle is not liable for confiscation under Section 56 of the Excise Act and bar of jurisdiction in confiscation as contemplated under Section 60 of the Act is not applicable and the Special Court, Excise where the excise case is pending has jurisdiction to pass order of provisional release of the vehicle.

In view of law laid down by Division Bench of this Court in case of Diwakar Kumar Singh vs. State of Bihar since reported in 2018 (3) PLJR 403 and following said judgment as well as other judgments passed by this Court, the Excise Commissioner, Bihar Patna in appeal arising out of Confiscation Case No. 107 of 2019 Ajit Roy Vs. Collector, Sheohar has held that transportation of prohibited article under the Act is a sine qua non for a vehicle to be confiscated.

The relevant paragraph of order passed in Appeal by Excise Commissioner is quoted below:-

“From the aforesaid judgment and order passed by the Hon<sup>ble</sup> High Court of Patna it is well established that the transportation of prohibited article under the Act, 2016, is a sine qua non for a vehicle to be confiscated on the passing of an order by the District Collector. Therefore the confiscation order passed by the learned Collector, Sheohar in confiscation Case No. 107/2019 on 09.12.2019 is hereby ordered to be modified to the extent that the three motorcycles bearing registration No. BR-06BJ 6591; BR-06BL 5384 and BR-55 4036 will be released after verifying the document related to registration and owner of the said vehicle.”

It is submitted that no confiscation proceeding has been initiated by the District Collector against the said vehicle, however, if any, confiscation proceeding has been initiated, same is directed to be dropped.

Accordingly, petitioner is directed to file an application before the concerned Special Court (Excise) under Section 451 of Cr.P.C. for interim release

of the vehicle which has been seized by the police in the case as same are not liable for confiscation and as such it is the Special Court (Excise),

which can pass an order for interim release of the vehicle, with terms and conditions of release as usually imposed. If any such application is filed by

the petitioner same to be disposed of within 30 days from the filing of said application.

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