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**(2020) 07 PAT CK 0318**

**Patna High Court**

**Case No:** Civil Writ Jurisdiction Case No. 4776 Of 2020

Akash Kumar Ram

APPELLANT

Vs

State Of Bihar And Ors

RESPONDENT

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

**Acts Referred:**

- Indian Penal Code, 1860 - Section 323, 341, 353, 504, 506
- Bihar Prohibition And Excise Act, 2016 - Section 37(c), 56, 60

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

**Bench:** Division Bench

**Advocate:** Anant Kumar Bhaskar, Vivek Prasad

**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:-

“The present writ application is being filed for issuance of appropriate writ or writs, direction or directions, order or orders commanding the

appropriate respondent to release the Glamour motor cycle bearing registration No. BR-01CN-8785 Chassis No. MBLJA06AMHGB22610 Engine

No.JAO6EJHGB19895 in favour of petitioner, after setting aside the order dated 13.1.2020 passed by the learned court of Additional Sessions Judge-

II-cum-Special Excise Court Saran at Chapra, which has been seized in connection with Mashrakh P.S. Case No.475/2019.”

Allegation against accused is driving motorcycle in a drunken condition for which FIR was lodged against him giving rise to Mashrakh P.S. Case

No.475/19 dated 2.11.2019 under Sections 341, 323, 353, 504, 506 of IPC and 37 (c) of Bihar Prohibition and Excise Act and the accused was arrested and his motorcycle was seized.

Petitioner claims to be the owner of the seized motorcycle and an application was filed on 23.12.19 in the court of Special Judge, Excise , Chapra for release of motorcycle in which the learned court called for a report from SHO, Mashrakh and Collector Saran and report submitted by the police in which it was stated that petitioner was owner of the vehicle and police has no objection if vehicle is released. The report from the Collector Saran was also submitted in which it was stated that no proposal of confiscation by the police in respect of said vehicle has been received, however, still the Special Court, Excise rejected the petition filed by petitioner for release of his vehicle by order dated 13.1.2020, as contained in Annexure 1.

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. 107/2019 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.â€

Accordingly, the order dated 13.1.2020 passed by Additional Sessions Judge-II-cum-Special Excise Court, Saran at Chapra, as contained in Annexure

1 is set aside and Special Court, Excise is directed to pass a fresh order on the petition of petitioner for release of vehicle within 30 days from date of receipt/production of a copy of the order passed by this Court.

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