

(2021) 07 PAT CK 0042

Patna High Court

Case No: Civil Writ Jurisdiction Case No. 479 Of 2021

Arun Kumar

APPELLANT

Vs

State Of Bihar

RESPONDENT

Date of Decision: July 12, 2021**Acts Referred:**

- Bihar Prohibition And Excise Act, 2016 - Section 30, 30(a), 45
- Indian Penal Code, 1860 - Section 379

Hon'ble Judges: Sanjay Karol, CJ; S. Kumar, J**Bench:** Division Bench**Advocate:** Navjot Yesu, Vivek Prasad**Final Decision:** Disposed Of

Judgement

Heard learned counsel for the parties.

Petitioner has prayed for following relief(s):-

That this is application for issuance of an appropriate writ(s), order (s) or direction(s) for quashing of the order dated 27.08.2020 passed by Ld.

2nd Additional Sessions Judge-cum-Special Judge (Excise), Saran in Khaira P.S. Case No. 55 of 2020 whereby and whereunder the petition of the

petitioner dated 22.05.2020 has arbitrarily and illegally rejected.

And further for issuance of appropriate writ or writs commanding the respondent authorities to release the Hero Honda Splendor Motorcycle bearing

Registration No. BR01CA-0122 Chassis No. MBLHA10A3EHC12147, Engine No. HA10ELEHC35722, belonging to the petitioner forthwith, which

was seized by the police in connection with Khaira P.S. Case No. 55/2020, instituted for the offences under Section 30, 30(a) & 45 of the Bihar

Prohibition and Excise Act 2016 pending in the court of Special Judge, Saran at Chhapra.

And, for grant of any other relief or reliefs for which the petitioner is found entitled to.â€

It is submitted on behalf of petitioner that he is the owner of the seized vehicle which was stolen by unknown thieves on 04.02.2020 for which he has

lodged FIR giving rise to Mashrak P.S Case No. 67 of 2020 for the offence punishable under Section 379 of IPC and 21 litres of Country Made

Mahua liquor was recovered from the said stolen vehicle which was seized by the police.

Petitioner claims to be owner of the seized vehicle and same was stolen on 04.02.2020 for which he had earlier instituted a case as such, petitioner

cannot be held to be responsible for transportation of illicit liquor, however, since the vehicle was used for transportation of illicit liquor same is liable

for confiscation and confiscation proceeding has been initiated by the District Collector, Sara at Chhapra, in which petitioner appeared and filed his

show cause for dropping the confiscation proceeding and also release of his seized vehicle but no order was passed.

In the facts and circumstances of the case, the District Magistrate/Confiscating officer, Saran at Chhapra, is directed to provisionally release the

vehicle of petitioner if District Magistrate is satisfied that the petitioner is a bonafide owner of the vehicle in question after due identification of

ownership of the vehicle which was stolen and subsequently recovered and seized by the police in excise case on production of ownership and

registration papers with respect to vehicle in question in his name with two sureties (one local) to the extent of the value of the vehicle as indicated in

the insurance document.

The petitioner while submitting the sureties shall also furnish the following affidavits/undertakings:

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

proceeding and shall not alienate the vehicle during this period.

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

(iii) Prior to release of the vehicle, a Panchanama would be prepared wherein the photograph of the vehicle shall be taken and will be certified by the petitioner and same shall be kept on record so that in future if so required, it may be used as a secondary evidence. The petitioner shall furnish an undertaking not to challenge the said Panchanama.

The release shall be allowed within a period of 14 days from the date of submission of the sureties and the undertakings as stated above, which would however be subject to finalization of the confiscation proceeding.

With said observations and direction, this writ petition is disposed of.