

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15864 of 2018

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Dhaneshwar Kumar Ray, Son of Chandeshwar Ray, resident of Village-
Dadpur, P.S.- Samastipur (Muffasil), District- Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Registration, Excise and Prohibition, Government of Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The Director General of Police, Bihar, Patna.
4. The Inspector General of Police, Bihar, Patna.
5. The District Magistrate/Collector, Samastipur.
6. The Superintendent of Police, Samastipur.
7. The Excise Superintendent, Samastipur.
8. The Officer-in-charge of Kalayanpur Police Station, District- Samastipur.
9. The Investigating Officer of Kalayanpur P.S. Case No. 73/2017. Samastipur, Muffasil Police Station- District- Samastipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Anuj Kumar
For the Respondent/s : Mr. Vikash Kumar- Sc11

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

2 20-12-2018 Heard learned counsel for the petitioner and learned
counsel for the State.

This application has been filed seeking provisional release of the vehicle (Tata Sumo) bearing Registration No. BR01PA7131, Engine No.483DL51HQZ712261 and Chasis No. MAT38505699H21853 seized in connection with Kalyanpur P.S. Case No.73 of 2017 registered under Sections 272 and 273 of I.P.C. and Section 30 and 38 of the Bihar Prohibition &



Excise Act, 2016. It has been stated that from the vehicle in question 90 liters illicit liquor have been recovered. It is submitted that no confiscation proceeding for the vehicle in question is pending.

Learned counsel for the petitioner submits that the vehicle is lying under open sky under the Police Station and if release is not allowed the vehicle is likely to become a junk and in such circumstance, the State is not going to gain anyway in confiscation proceeding. Learned counsel submits that the petitioner is willing to provide such surety and undertakings which may be required to protect the interest of the State during the pendency of the confiscation.

Learned counsel for the State is present and submits that in the given facts and circumstances of this case if at all the Court is willing to consider provisional release of the vehicle then interest of the State is required to be protected.

In the given facts and circumstances where vehicle in question is lying under open sky, losing its road worthiness, keeping in mind the interest of the State as well, we direct that pending initiation/finalization of the confiscation proceeding, the vehicle in question be released provisionally in favour of the petitioner on the petitioner's producing the document of



ownership and registration in his name before the court below with one surety along with a Bank Guarantee to the extent of the value of the vehicle as indicated in the insurance document. The petitioner while submitting the surety shall also furnish the following affidavits/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 confiscation 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 of the vehicle a Panchnama would be prepared by the court below 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 furnish an undertaking not to challenge the said Panchanama in course of trial.



Subject to the above conditions, following the views expressed by the Hon'ble Division Bench of this Court and in tune with that, we dispose of this application.

The release shall be allowed within a period of 7 days from the date of submission of the surety along with a Bank Guarantee and the undertakings as stated above. This would, however, be subject to the final order passed in confiscation proceeding.

(Jyoti Saran, J)

(Rajeev Ranjan Prasad, J)

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