

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5422 of 2018

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Jokhan Sah, son of Bijali Sah, Resident of Village- Mathiya Mali Gahariya, Post- Gohariya, P.S.- Vishunpur, District- Kushinagar (U.P.). at present address Resident of Village- Bhitahan, P.S.- Bhitahan, District- West Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through Secretary of the Excise Department, Bihar at Patna.
2. The Collector cum District Magistrate, West Champaran, Betiyah.
3. The Superintendent of Police, West Champaran.
4. The Sub- Divisional Police Officer, Betiyah.
5. The Officer-in- Charge of Police Station- Nadi, District- West Champaran.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Gauri Shankar Thakur
For the Respondent/s : Mr. Vivek Prasad -Gp7

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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 10-12-2018 Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner while seeking setting aside of confiscation order prays for provisional release of the vehicle (Motorcycle) bearing Registration No. UP57R-8425, Engine No. HA11EFDIK37641, Chesis No. MBLHA11EWD9K37641 seized on 03.08.2017 in connection with Nadi P. S. Case No. 39 of 2017 registered under Section 30(a) of the Bihar Prohibition & Excise Act, 2016.

At the outset, and counsel for the petitioner submits



that in view of the recent judgment of the Hon'ble Full Bench passed in L. P. A. No. 1647 of 2015 disposed of on 01.11.2018, he would instead of pressing this application against the order dated 23.01.2018 passed by the Collector-cum-District Magistrate, West Champaran, Bettiah in Confiscation Case No. CRM-331 of 2017-18, would pray for allowing him an opportunity to present an appeal before the statutory authority. Learned counsel for the petitioner submits that he would present the appeal within a period of 30 days from today.

Learned counsel thereafter presses this application for purpose of provisional release of vehicle at this stage and during pendency of the appeal before the statutory authority. It is submitted that such prayer is required to be made because under the provisions of Bihar Prohibition and Excise Act, even the appellate authority has no power to direct interim release of the vehicle. It is submitted that the vehicle is lying under open sky for last more than one year and every day it is losing its road worthiness and is likely to become a junk, if it is allowed to remain there under the same condition. Learned counsel, therefore, submits that finding the nature of the case where only 5.2 liters illicit liquor is said to have been recovered from the vehicle in question which is a motorcycle and is of personal use



of petitioner, this Court may exercise its jurisdiction under Article 226 of the Constitution of India to direct a provisional release of the vehicle on such terms and conditions which may be imposed by this Court.

Learned counsel for the petitioner submits that he has instruction to say that the petitioner would abide by all such terms and conditions.

Mr. Vivek Prasad, learned counsel representing the State though opposed this application and prayer of petitioner for provisional release of the vehicle, however, submits that in any case, if the Court is willing to consider the provisional release of the vehicle, appropriate safeguards be provided to protect the interest of the State.

Considering the facts and circumstances of the case where this Court finds that the vehicle is lying under open sky for last about 16 months by now and filing of the appeal and disposal thereof is likely to take some time and further it is the stand of the State that even the appellate authority cannot direct release of the vehicle, this Court is willing to exercise its discretion and direct the provisional release of the vehicle in question for the present and during the pendency of the appeal. While doing so this Court would make it clear if the appeal is



not preferred within a period of 30 days from today, the interim order of release shall stand withdrawn and the confiscating authority would be within his right to proceed with the matter ahead.

For the purpose of release of the vehicle in question, this Court directs for provisional release of the vehicle in question on petitioner's producing document of ownership and registration in his name before the confiscating authority i.e. the Collector-cum-District Magistrate, West Champaran, Betiayh with two sureties 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 vehicle in question has never been involved in any offence of similar nature in past.

(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 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 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 sureties and the undertakings as stated above. This would, however, be subject to the order passed in appeal.

(Jyoti Saran, J)

(Rajeev Ranjan Prasad, J)

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