

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10027 of 2018

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Md. Saddam @ Saddam Hussain, son of Kaleemuddin, Resident of Village-
Khirdaha Tola Vairiya, Police Station- Jokihat, District- Araria.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Excise, Government of Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The District Magistrate, Araria.
4. The Superintendent of Police, Araria.
5. The Superintendent of Excise, Araria.
6. The S.H.O. Kursakanta Police Station, District- Araria.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mukesh Kumar Rana
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 10-12-2018 Heard learned counsel for the petitioner and learned
counsel for the State.

This application has been filed seeking provisional release of the vehicle (Motorcycle) bearing Registration No. BR38H-2192, Chassis No. MBLJAO6EVBGAO3388, Engine No. JAO6EEBGA03919, seized in connection with Kursakanta P.S. Case No. 74 of 2018 dated 27.03.2018 registered under Section 30(a) of the Bihar Prohibition & Excise Act, 2016. It has been stated that from the vehicles in question 42 liters illicit liquor have been recovered. It is submitted that the petitioner has not received any notice till date regarding confiscation proceeding for the vehicles in question.



Learned counsel for the petitioner submits that the vehicle is lying under open sky under the Police Station and if it is allowed to remain there for any longer time, the whole motorcycle will become a junk and if release is not allowed, 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.

In the given facts and circumstances where no confiscation proceeding is presently pending, let 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 two sureties 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 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 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 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 initiation and finalization of the confiscation proceeding if any.

(Jyoti Saran, J)

(Rajeev Ranjan Prasad, J)

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