

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15826 of 2018

Nitu Kumari Alias Nitu Devi daughter of Ganesh Ram, wife of Sunil Kumar residence of Village+ Post Office- Bharatpura, Police Station- G.B. Nagar (Tarwara), District- Siwan. presently residence of Village- Ratan Parauli Tiwari Tola, Post Office- Ratan Parauli, Police Station- Bhagwanpur, District- Siwan.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Excise, Government of Bihar, Patna.
2. The District Magistrate, Siwan.
3. The Superintendent of Police, Siwan.
4. The Station Head Officer Police Station- Bhagwanpur Hat, District- Siwan.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Shambhu Prasad Yadav
For the Respondent/s : Mr.Kumar Manish- Sc5

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 (Passion Pro Motorcycle) bearing Registration No. BR29K-5893 seized in connection with Bhagwanpur Hat P.S. Case No. 245 of 2017 dated 22.11.2017 registered under Sections 279, 273, 308, 420 of the Indian Penal Code and Sections 41(1), 30(a) of the Bihar Prohibition & Excise Act, 2016. It has been stated that from the vehicle in question 2 liter illicit spirit 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 it is allowed to remain there for any longer time, the whole vehicle 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.

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 no confiscation proceeding is 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 along 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 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 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 surety bond 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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