

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.2566 of 2018

Arising Out of PS. Case No.-777 Year-2018 Thana- SITAMARHI District- Sitamarhi

Chhote Rai @ Ankit, Son of Jaleshwar Rai, Resident of Village Kodwara,
P.S.- Sahiyara, District- Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise, Prohibition and Registration, Patna.
2. The District Magistrate cum Collector, Sitamarhi.
3. The Excise Commissioner, Bihar, Patna.
4. The Superintendent of Police, Sitamarhi.
5. The Police Inspector cum Officer Incharge, Sitamarhi Police Station.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Sanjay Kumar
For the Respondent/s	:	Mr. Vikash Kumar (SC-11)

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL ORDER

2 17-12-2018 Heard learned counsel for the petitioner and learned
counsel for the State.

This application has been filed seeking provisional
release of the vehicle (Hero Honda Splendor Pulsar Motorcycle)
bearing Registration No. BR-30Q-5056 seized in connection
with Sitamarhi P.S. case No.777 of 2018 dated 08.08.2018
registered under Sections 30(a) of the Bihar Prohibition &
Excise Act, 2016.

Accusation is that 180 ml wine is recovered from the



motorcycle of the petitioner.

Learned counsel for the petitioner submits that the confiscation proceeding for the vehicle in question is pending vide Confiscation Case No. 729 of 2018 before the Collector, Sitamarhi. Learned counsel for the petitioner further 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 also 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 petitioner has relied upon the decision of the Supreme Court in the case of *Sunderbhai Ambalal Desai vs. State of Gujrat* reported in (2002) 10 SCC 283 and *General Insurance Council and others vs. State of Andhra Pradesh and others* reported in (2010) 6 SCC 768 and the decision of the Hon'ble High Court, Patna passed in C.W.J.C. No.16839 of 2018 dated 03.12.2018.

In the given facts and circumstances where vehicle in question is lying under open sky, losing it's road worthiness, keeping in mind the interest of the State as well, I direct that



pending finalization of the confiscation proceeding, the vehicle in question be released provisionally in favour of the petitioner on producing the document of ownership and registration in his name before the District Magistrate, Sitamarhi (Confiscating Authority) 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/appeal 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 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 Apex Court as well as Hon'ble Division Bench of this Court and in tune with that, I 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 final order passed in confiscation proceeding.

(Sudhir Singh, J)

Narendra/-

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