

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17900 of 2017

=====

Rana Transport Company , having its registered office at Kuldeep Nagar, P.S. Ambala, Distt- Ambala, Haryana through its authorised representative, Satpal Kumar S/o Sri Som Nath Resident of 97, Sakti Colony, Ambala City, P.S. Baldev Nagar, District- Ambala , Haryana.

... .. Petitioner/s

Versus

1. The Principal Secretary, Excise Department of Bihar Patna.
2. The Collector, Vaishali at Hajipur.
3. The Officer-in-Charge, Patepur Police Station, P.S. Patepur, District- Vaishali at Hajipur.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Saket Tiwary
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)

5 10-12-2018 The petitioner in the present case is seeking provisional release of the Truck bearing registration no. HR-37D-6981, Engine No. GYHZ421324, Chasis No. MB1A2GADOG RYP which has been seized in connection with Patepur P. S. Case No. 100 of 2017 on 26.10.2017. The vehicle was allegedly carrying illicit liquor of about 2216 liters.

Learned counsel for the petitioner submits that till date no notice of confiscation has been received by the petitioner. It is further submitted that the vehicle is lying under the open sky for last more than one year and there is no likelihood of initiation or finalization of the confiscation



proceeding, if any, in near future. In these circumstances, it is submitted that if the vehicle is allowed to remain under seizure for any longer time, the whole vehicle will become a junk, even valuable parts of the vehicle may be stolen away. In these circumstances, learned counsel for the petitioner submits that if the State authority having not initiated any confiscation proceeding for over one year, leaving vehicle in the present condition would only be a gross injustice to the petitioner, particularly when the petitioner is ready and willing to abide by such terms and conditions which may be imposed by this Court for the purpose of provisional release of the vehicle in order to protect the interest of the State.

Mr. Kumar Manish, learned Government Pleader representing the State submits that he has instruction to say that the prosecution report has been sent to the District Magistrate but there is no instruction as to whether a confiscation proceeding has been initiated.

Considering the facts and circumstances of the case, particularly where it appears to this Court that the vehicle is lying under open sky for last more than one year and till date even the confiscation proceeding has not been initiated, this Court does not find any reason to allow the vehicle to remain



under the present condition. This Court is, therefore, willing to exercise its discretion under Article 226 of the Constitution of India to direct the court below to release the vehicle in question provisionally in favour of the petitioner on the petitioner's producing the document of the ownership and registration in his name with two local sureties along with an irrevocable bank guarantee to the extent of the value of the vehicle as indicated in the insurance document because the vehicle belongs to State of Haryana and even the petitioner is also a resident of Haryana. The petitioner while submitting the local sureties along with a bank guarantee 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 activities 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 sureties along with the irrevocable bank guarantee 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)

avin/-

U		T	
---	--	---	--

