

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.2780 of 2018

Arising Out of PS. Case No.-79 Year-2017 Thana- CHAND District- Bhabhua (Kaimur)

Adarsh Kumar Jaiswal, Son of Muneshwar Jaiswal, Resident of Village-
Jigina Police Station- Bhabua, District- Kaimur Bhabua, Present Resident of
Village- Jaunpur Line Bazar, Police Station - Jaunpur, District- U.P.

... .. Petitioner/s

Versus

1. The State of Bihar Through Its Principal Secretary, Excise Department,
Government of Patna, Bihar a
2. The Divisional Commissioner, Excise Department, Bihar Division, at Patna.
3. The District Collector-cum- District Magistrate, Kaimur Bhabua.
4. The Superintendent of Police, Kaimur, Bhabua.
5. The Superintendent of Excise, Kaimur Bhabua.
6. The Inspector, Motor Vehicle, Kaimur Bhabua.
7. The A.S.I. of Chand Police Station.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Praveen Kumar
For the Respondent/s : Mr.Kumar Manish Sc 5

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL ORDER

2 18-12-2018 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. UP-62-Y/9278, seized in
connection with Chand P. S. Case No. 79 of 2017 on 25-04-
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 31.07.2018 passed by the Collector-cum-District Magistrate, Kaimur at Bhabua in Confiscation (Excise) Case No. 238 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, if not presented yet.

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 by now, 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 9.25 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. Kumar Manish, 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 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 producing document of ownership and registration in his name before the confiscating authority i.e. the Collector-cum-District Magistrate, Kaimur at Bhabua 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 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, 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 order passed in appeal.

(Sudhir Singh, J)

A.K.V.//-

U			
---	--	--	--

