

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16839 of 2018

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1. Mukesh Kumar Thakur @ Mugesh Kumar, Son of Ram Bilas Thakur, Resident of No.69 Seven Wells, Police Station- Seven Wells, District- Chennai, Tamilnadu, at present resident of Village- Sagarpur, Police Station- Sakri, District- Madhubani.
 2. Suman Kumar Thakur, Son of Ram Prasad Thakur, Resident of GRD F1R, Road No. 291-4/4, SAI BABA NAGAR, 90 FEET ROAD Dharavi Mumbai Police Station Dharavi Mumbai, District- Mumbai, Maharashtra, at present resident of Village- Sagarpur, Police Station- Sakri, District- Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Excise Department, Government of Bihar, Patna.
2. The Collector, Madhubani.
3. The Excise Superintendent, Madhubani.
4. The Superintendent of Police, Madhubani.
5. The Officer-in-Charge of Sakri Police Station, District- Madhubani.
6. The Investigating Officer cum Assistant Sub Inspector, Sakri Police Station, Police Station- Sakri, District- Madhubani.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Viveka Nand Singh, Advocate
For the Respondent/s : Mr. Vivek Prasad -GP7

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

2 03-12-2018 Heard learned counsel for the petitioners and learned
counsel for the State.

This application has been filed seeking provisional release of the vehicles bearing Registration No. TN 04J-3526 and MH04AS-9587 seized in connection with Sakri P. S. Case No. 67 of 2017 dated 21.06.2017 registered under Sections 272, 273 of the Indian Penal Code and Section 30(a) of the Bihar



Prohibition & Excise Act, 2016. It has been stated that from the vehicles in question 45 liters and 36 liters illicit liquor have been recovered. It is submitted that the confiscation proceeding for the vehicles in question is pending vide Confiscation Case No. 0618/2017-18 before the Collector, Madhubani.

Learned counsel for the petitioners submits that the vehicles are lying under open sky under the Police Station during last more than one year 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 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 vehicles in question are lying under open sky, losing its' road worthiness, keeping in mind the interest of the State as well, we direct that pending finalization of the confiscation proceeding, the vehicles in question be released provisionally in favour of the petitioners on the petitioners' producing the document of ownership and registration in their names before the Collector, Madhubani (Confiscating Authority) with two local sureties along with an irrevocable bank guarantee separately of any



nationalized/scheduled Bank to the extent of the value of the each of the vehicles as indicated in the insurance documents. The petitioners while submitting the surety bonds 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 petitioners shall not indulge in creating any third party right or interest in respect of the vehicles during the pendency of the appeal and shall not alienate the vehicles during this period.

(iii) The petitioners shall furnish an undertaking to produce the vehicles before the confiscating authority as and when required.

(iv) Prior to release of the vehicles a Panchnama would be prepared by the confiscating authority wherein the photograph of the vehicles shall be taken and will be certified by the petitioners and the same shall be kept on record so that in future if so required it may be used as a secondary evidence. The petitioners 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 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 local sureties along with the irrevocable Bank Guarantees of a nationalized/scheduled Bank and the undertakings as stated above. This would, however, be subject to the final order passed in confiscation proceeding.

(Jyoti Saran, J)

(Rajeev Ranjan Prasad, J)

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