

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.3655 of 2018

In
Civil Writ Jurisdiction Case No.12272 of 2018

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Lalit Yadav, Son of Bhogendra Yadav, resident of Village Mukhiyanpatti,
P.S.:- Saharghat, District:- Madhubani.

... .. Petitioner/s

Versus

1. The State of Bihar, through Principal Secretary, Excise Department of Patna, Bihar.
2. The Divisional Commissioner, Excise Department of Darbhanga Division, Darbhanga.
3. The Collector, Madhubani.
4. The Superintendent of Police, Madhubani, District:- Madhubani.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Subhash Kumar Jha, Advocate
For the Respondent/s : Mr. Anil Kumar Sinha – G.A. 1

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

2 19-12-2018 Heard learned counsel for the petitioner and learned
counsel representing the State.

This application has been preferred seeking modification of the order dated 05.07.2018 passed in C.W.J.C. No. 12272 of 2018 by which, while directing provisional release of the vehicle in question, we had imposed a condition by way of deposit of a Bank Guarantee with respect to the valuation of the vehicle. While doing so, we had taken into consideration the fact that the quantity of the alleged illicit liquor, which had been



recovered from the vehicle in question, was more than 30 litres and we had been invariably taking this view that in such cases the condition of submission of Bank Guarantee should be imposed. Over the period it has been found that in certain cases some genuine difficulties have been canvassed before this Court saying that the Bank Guarantees are not being available without depositing the entire money with the Bank.

This is a case in which the petitioner has moved this application seeking a slight modification with respect to the condition on the grounds inter alia that the petitioner is a very poor person and is unable to produce a Bank Guarantee equal to the cost of the vehicle. Learned counsel representing the petitioner submits that since the vehicle itself is involved in the commission of the offence, even the banks are not willing to provide Bank Guarantee in such cases.

Learned counsel for the State, however, opposed the submission of the learned counsel for the petitioner as, according to him, the provisions to submit a Bank Guarantee is a reasonable condition imposed by this Court taking into consideration the interest of the State. Learned counsel, however, submits that, in certain cases, the banks are not willing to provide Bank Guarantee without deposit of entire money.



Having heard learned counsel for the petitioner and learned counsel representing the State, we are of the considered opinion that, in the nature of the hardship expressed by the petitioner in the present case, where the vehicle involved is a Tempo which he was running to earn his livelihood and the same is under seizure over 8 months approximately, he would not be in a position to produce a Bank Guarantee, the request of the petitioner is required to be considered. Learned counsel for the petitioner has submitted that the petitioner is ready and willing to deposit the original title deed of a piece of land covering the cost of the vehicle and situated within the District and such land may be allowed to be accepted as an adequate security for purpose of provisional release of the vehicle. Learned counsel further impresses upon this Court that the petitioner shall submit such undertakings which may be required to protect the interest of the State, such as, he shall not deal with and would not sell or encumber the land in question during pendency of the confiscation proceeding.

We are willing to accept the submission of learned counsel for the petitioner.

Let the order dated 5.7.2018, passed in C.W.J.C. No. 12272 of 2018 be modified to the extent that now the petitioner



will be required to deposit the original title deed of a piece of land situated within the District along with an undertaking that during pendency of the confiscation proceedings he would not deal with the land in any manner, whatsoever, and shall not create any encumbrance. On furnishing the original title deed along with the undertaking, the vehicle shall be released within a period of 7 days.

Before releasing the vehicle, the confiscating authority will prepare a 'panchnama' in the form of a photograph of the vehicle, which will be certified by the petitioner and shall be kept on the record for future use. The petitioner will give an undertaking that he would not challenge the said 'panchnama' in course of the trial or the confiscation proceedings.

The application stands disposed of.

(Amreshwar Pratap Sahi, CJ)

(Rajeev Ranjan Prasad, J)

K.C.Jha/Uma/-

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