

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.2734 of 2018

Arising Out of PS. Case No.-328 Year-2018 Thana- GOVERNMENT OFFICIAL COMP.
District- Sitamarhi

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Dipak Kumar, Son of Rak Ekbal Prasad @ Ram Ekbal Sah, R/o Mejarganj,
Ward No.8, P.S. Mejarganj, Distt.-Sitamarhi.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Registration, Excise and Prohibition Department, Govt. of Bihar, Patna.
2. The Collector, Sitamarhi.
3. The Deputy Collector, Incharge, District Law Section, Sitamarhi.
4. The Superintendent of Excise, Sitamarhi.
5. The Sub-Inspector, Excise, Pupri Circle, Sitamarhi.

... .. Respondents

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Appearance :

For the Petitioner : Mr. Ashok Kumar Jha, Advocate.
For the Respondents : Mr. Anil Kumar Sinha, G.A. 1.

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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 (Glamour Motorcycle) bearing
Registration No. BR-30L-7055, seized in connection with
Excise Case No. C2-328 of 2018 registered under Section 30(a)
of the Bihar Prohibition & Excise Act, 2016.

Accusation is that 114 Liters 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. 601 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 for the petitioner 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 decisions of the Supreme Court in the cases of *Sunderbhai Ambalal Desai Vs. State of Gujarat*, 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. 20557 of 2018 (D.B.) dated 03.12.2018.

In the given facts and circumstances where vehicle in question is lying under open sky, losing its' 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 Collector, Sitamarhi (Confiscating Authority) with two sureties alongwith a bank guarantee of any nationalized/scheduled Bank to the extent of the value of the each of the vehicle as indicated in the insurance documents. The petitioner 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 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 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 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 seven days from the date of submission of the sureties alongwith the Bank Guarantee of a nationalized/scheduled Bank and the undertakings as stated above. This would, however, be subject to the final order passed in confiscation proceeding.

(Sudhir Singh, J)

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