

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.2765 of 2018

Arising Out of PS. Case No.-130 Year-2018 Thana- RAFIGANJ District- Aurangabad

Santosh Dubey, Son of Mandip Dubey, resident of Village-Sahar, P.S. Madanpur, District-Aurangabad (Bihar).

... .. Petitioner

Versus

1. The State Of Bihar through the Principal Secretary Department Of Excise Government Of Bihar, Patna.
2. The District Magistrate, Aurangabad.
3. The Superintendent of Police, Aurangabad.
4. The Officer-in-Charge, Rafiganj Police Station, District-Aurangabad.

... .. Respondents

Appearance :

For the Petitioner : Mrs. Leelawati Kumari, Advocate.
For the Respondents : Mr. Anil Kumar Sinha, G.A. 1.

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL ORDER

2 20-12-2018 Heard learned counsel for the petitioner and learned counsel for the State.

This application has been filed seeking provisional release of the vehicle (Tempo) bearing Registration No. BR26PA0509, seized in connection with Rafiganj P.S. Case No. 130 of 2018 dated 14.07.2018 for the offence registered under Sections 30(a) and 38 of the Bihar Prohibition & Excise Act, 2016.

Accusation is that 210 liters spirit is recovered from the Tempo of the petitioner.

Learned counsel for the petitioner submits that no confiscation proceeding has been initiated for the vehicle in



question. Learned counsel for the petitioner further submits that the vehicle is lying under open sky under the Police Station and if it is allowed to remain there for any longer time, the whole Tempo will become a junk and if release is not allowed, 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 case of *Sunderbhai Ambalal Desai Vs. State of Gujrat*, reported in 2002 (10) SCC283 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. 10027 of 2018 (D.B.) dated 10.12.2018.

In the given facts and circumstances where no confiscation proceeding has been initiated, let 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 concerned court below with two sureties alongwith a bank guarantee 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 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 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 and the undertakings as stated above. This would, however, be subject to initiation and finalization of the confiscation proceeding, if any.

(Sudhir Singh, J)

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