

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12478 of 2018

In
Criminal Writ Jurisdiction Case No.1135 of 2018

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Ved Prakash Pandey son of Bhola Pandey, R/o Sahewan Tola, Near- Education Colony, P.S.- Khajanchi Hat, District- Purnea Petitioner

Versus

1. The State Of Bihar through the Principal Secretary, Excise and Prohibition Department, New Secretariat, Bailey Road, Patna

2. The District Collector, Purnia (Bihar)

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rajesh Kumar

For the Respondent/s : Mr. Vikash Kumar- Sc11

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

4 03-12-2018 Heard learned counsel for the petitioner and learned counsel for the State.

At the very outset, learned counsel for the petitioner submits that for the present he would not be pressing the relief no. 1

(i) wherein he has challenged the constitutional validity of Section 68B of the Bihar Prohibition & Excise (Amended) Act, 2016.

Learned counsel for the petitioner, however, submits that in the present case a confiscation order has already been passed and he would be challenging the same in an appropriate jurisdiction by filing an appeal before the Commissioner within a period of 30 days from today.

In view of the circumstance, this application is being disposed of with liberty to the petitioner to challenge the order of



confiscation before the appellate authority within a period of 30 days from today. In case such an appeal is preferred within the aforesaid period, with an application for condonation of delay, the appellate authority shall consider the same keeping in mind that the petitioner was prosecuting his remedy before this Court and the appeal shall be heard on its own merit and disposed of expeditiously.

Learned counsel for the petitioner, at this stage, submits that because the appellate authority has no power to pass an interim order of release, he would press this application for a provisional release of the vehicle being Apache Motorcycle bearing Registration No. BR11G-8809 seized in connection with Dagarua P.S. Case No. 71 of 2016 registered under Sections 272, 273 of the Indian Penal Code and Section 47(A) of the Bihar Prohibition & Excise Act, 2016 dated 31.07.2016. It has been stated that from the vehicle in question 17 liter illicit liquor has been recovered.

Learned counsel for the petitioner submits that the vehicle is lying under open sky under the Police Station and during last two years it is almost a junk and if not allowed to release, 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 appeal.

Today we have passed order of release in similar circumstance in C.W.J.C. No. 8513 of 2018 wherein we have



considered the submissions of the State and during the pendency of the appeal a provisional release has been allowed subject to such conditions which may be imposed to protect the interest of the State. In similar lines, we take a similar view in the present case as well.

Let the vehicle in question be released provisionally in favour of the petitioner on the petitioner's producing the document of ownership and registration in his name before the District Magistrate, Purnia (Confiscating Authority) with two surety bond to the extent of the value of the vehicle as indicated in the insurance document. If the petitioner fails to present an appeal within 30 days as given above, the order of provisional release shall be withdrawn by the Confiscating Authority. The petitioner while submitting the surety bond 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 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, we dispose of this application.

The release shall be allowed within a period of 7 days from the date of submission of the surety bond and the undertakings as stated above. This would, however, be subject to the order passed in appeal.

(Jyoti Saran, J)

(Rajeev Ranjan Prasad, J)

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