

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5171 of 2018

=====

Mukesh Kumar Jha, Son of Arjun Jha, Resident of Village Jaideo Patti, P.S. Ghanshyampur, District- Darbhanga.

... .. Petitioner

Versus

1. The State of Bihar through the Collector, Darbhanga, District Darbhanga.
2. The Senior Superintendent of Police, Darbhanga, District- Darbhanga.
3. The Superintendent of Police, Excise Department, Darbhanga, District- Darbhanga.
4. The Commissioner Excise Department, Bihar, Patna.
5. The Officer in Charge Sakatpur, P.S. Sakatpur, District- Darbhanga.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Ram Bali Jha
For the Respondent/s : Mr. Kumar Manish- Sc5

=====

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

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

2 17-12-2018 Heard learned counsel for the petitioner and learned counsel for the State.

This writ application has been preferred seeking setting aside of the order of confiscation dated 17.01.2018 passed in Excise Confiscation Case No. 112 of 2017 by Collector, Darbhanga by which the vehicle (Motorcycle) bearing registration no. BR32F-6294 has been ordered to be confiscated under the provision of the Bihar Prohibition and Excise Act, 2016 (as amended up to date) (hereinafter referred to as the 'Act'). A prayer is also made for provisional release of the vehicle at this stage and during the pendnecy of the



challenge to the confiscation order.

Learned counsel for the petitioner submits that even though there is a statutory Appeal provided under the Act against the order of confiscation but the same has been challenged before the writ Court on the basic premise that a District Magistrate being an executive cannot be conferred with power of confiscation. At this stage learned counsel submits that in view of the recent Full Bench Judgment in the case of **Baleshwar Roy V. the State of Bihar & Ors.** reported in **2018 (4) PLJR 970**, this argument is no longer available to the petitioner. Learned counsel, therefore, seeks leave not to press the prayer and to allow the petitioner to challenge the confiscation order before the Appellate Authority for which 30 days time may be allowed.

Learned counsel, however, submits that the writ application for provisional release of the vehicle is maintainable because there is no provision in the Act conferring power upon it then the Confiscating Authority or the Appellate Authority to direct interim release of the vehicle. Learned counsel submits that in order to protect the interest of the State, this Court may impose such terms and conditions which may be deemed just and proper in the facts and circumstances of this Case.



On the other hand, learned counsel for the State opposes the prayer of the petitioner for provisional release on the ground that the vehicle has already been confiscated, however, it is also submitted that if at all this Court considers provisional release of the vehicle the interest of the State is required to be fully protected.

Learned counsel for the State taken a stand that under the 'Act' there is no power on the Appellate Authority to grant a provisional release of the vehicle.

Having heard learned counsel for the parties and on perusal of the records, we find that in the facts and circumstances of the case, since the petitioner was pursuing his remedy against the order of confiscation before this Court for all these periods, the prayer of learned counsel for the petitioner to grant him leave not to press this prayer and instead allow him to file a statutory appeal within a period of 30 days before the appellate authority under the Act is fit to be allowed.

Accordingly the petitioner is granted liberty to prefer statutory appeal before the appellate authority within a period of 30 days from today along with an application for condonation of delay and on filing such application the appellate authority shall consider the same on merit keeping in mind that the



petitioner was pursuing his remedy before this court under bonafide belief as the issue raised by the petitioner was pending consideration before the Hon'ble Full Bench of this Court.

So far as the prayer for provisional release is concerned, it is found that the vehicle in question was seized in connection with Sakatpur P. S. Case No. 23 of 2017 for recovery of 1.875 liters illicit liquor.

It is the contention of learned counsel for the petitioner that the vehicle is lying under open sky and day by day it is loosing its road worthiness and very soon it is likely to become a junk. It is also pointed out by learned counsel for the petitioner that the vehicle is placed without there being any security and there is every likelihood that valuable parts of the vehicle may be stolen away leaving the vehicle a burden for the State and in ultimate analysis at the end of the confiscation proceeding /Appeal/Revision the State will not be in a position to get anything out of it.

Considering this aspect of the matter, we are of the considered opinion that leaving the vehicle in present condition is not justifiable. It is the contention of the State that the appellate authority under the Act or the confiscating authority has no power to grant provisional release of the vehicle, if it is



so then in terms of the law laid down by the Hon'ble Full Bench in the case of **Baleshwar Roy** (Supra), the present application for provisional release is fit to be considered. We are of the view that since the vehicle is lying under open sky and losing its road worthiness day by day, this will be a case of gross injustice if the vehicle is allowed to remain as it is for an indefinite period till finalization of the appeal and the revision which are the statutory remedies provided under the Act.

We have been told that the vehicle has not been auctioned sold pursuant to the confiscation order and therefore, while protecting the interest of the State we hereby direct provisional release of the vehicle (Motorcycle) bearing registration no. BR 32F-6294 at this stage and during the pendency of the appeal in favour of the petitioner. It is, however, made clear that in case the appeal is not preferred within the given period of 30 days from today, the confiscating authority shall be at his discretion to proceed further in terms of the confiscation order.

We direct provisional release of the vehicle on the petitioner's furnishing document of ownership and registration of vehicle in his favour along with two surety (not in form of cash or bank guarantee) to the satisfaction of the District



Magistrate, Darbhanga to the extent of the value of the vehicle as indicated in the insurance document to the satisfaction of the District Magistrate, Darbhanga. While doing so the petitioner shall also furnish the following affidavits/undertakings:-

(i) That the vehicle in question is not involved in any other similar offence in past and shall not be indulged in commission of similar offence in future.

(ii) That the petitioner shall not alienate the vehicle in question in favour of the third party and shall not create any encumbrance of third party interest in respect of the vehicle in question.

(iii) That the vehicle shall be produced before the confiscating authority as and when required in accordance with law.

The confiscating authority shall, thereafter, direct provisional release of the vehicle in question within a period of seven days from the date of submission of the aforesaid sureties and undertakings/affidavits.

The confiscating authority shall prepare a Panchnama i.e. photograph of the vehicle be taken before release which should be signed by the petitioner and the same shall be kept on record for future reference as secondary evidence.

Learned counsel for the petitioner has given undertaking



on instruction that the Panchnama so prepared at the time of provisional release shall not be challenged by the petitioner in any court or before the authority as the case may be.

This application stands disposed of accordingly.

(Jyoti Saran, J)

(Rajeev Ranjan Prasad, J)

avin/-

U			
---	--	--	--

