

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14870 of 2018

Shivnath Sah @ Lal Sah, S/o Butan Sah, resident of Village- Laxmi Narayanpur, P.S. Lalganj, Dist.- Vaishali.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Excise, Government of Bihar, Patna.
2. The District Magistrate, Vaishali at Hajipur.
3. The S.H.O. Lalganj, Police Station Vaishali at Hajipur.
4. The Principal Secretary, Home Police, Bihar, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ghanshyam Choudhary
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)

3 19-12-2018 Heard learned counsel for the petitioner and learned counsel for the State.

This application has been filed seeking provisional release of the vehicle (Escort Power Track 434 x2 tractor with trailer) bearing Engine No. E3301422, Chasis No. T053271384 TSI No. T3271571 seized in connection with Lalganj P. S. Case No. 240 of 2017 dated 06.10.2017 registered under Section 30 (a), 32(2), 41(1) of the Bihar Prohibition & Excise Act, 2016. It has been stated that from the vehicle in question 1331.280 liters illicit liquor have been recovered. It is submitted that the confiscation proceeding for the vehicle in question is pending.

Learned counsel for the petitioner 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 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 submits that although the vehicle in question is registered in the name of brother of the petitioner but since the petitioner is the accused in this case he has moved this application seeking release of the vehicle. It is his submission that he was running the vehicle under some agreement with his brother and in case the vehicle is allowed to be provisional released the terms and conditions which may be imposed by this Court shall be complied by the owner of the vehicle.

Learned counsel for the State is present and submits that in the given facts and circumstances of this case if at all the Court is willing to consider provisional release of the vehicle then interest of the State is required to be protected.

On such representation being made by learned counsel for the petitioner on instruction, 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, we direct that pending finalization of the confiscation proceeding, the vehicle in question be released provisionally in favour of its owner



on producing the document of ownership and registration in his name before the District Magistrate, Vaishali at Hajipur (Confiscating Authority) with one surety along with a Bank Guarantee to the extent of the value of the vehicle as indicated in the insurance document. The petitioner as well as the owner of the vehicle in question while submitting the surety along with the Bank Guarantee 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 and shall not indulge in similar offence in future.

(ii) That the petitioner and owner of the vehicle in question 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 and owner of the vehicle in question 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 owner of the vehicle in question 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 and the owner of the vehicle in question shall furnish an undertaking 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 along with a Bank Guarantee and the undertakings as stated above. This would, however, be subject to the final order passed in confiscation proceeding.

(Jyoti Saran, J)

(Rajeev Ranjan Prasad, J)

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