

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.2742 of 2018

Arising Out of PS. Case No.-16 Year-2018 Thana- GOVERNMENT OFFICIAL COMP.
District- Samastipur

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Binod Kumar @ Vinod Kumar, Son of Late Ganga Prasad Mahto, Resident of
Village- Birsahiya (Singhia Ghat), Police Station- Bibhutipur, District-
Samastipur.

... .. Petitioner/s

Versus

1. The State of Bihar Through its Principal Secretary, Registration, Excise And Prohibition Department, Government of Bihar, Patna.
2. The District Magistrate-cum-Collector, Samastipur.
3. The Superintendent of Police, Samastipur.
4. The S.I. of Excise, Samastipur.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Mritunjuay Kumar
For the State	:	Mr. Vikash Kumar

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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 Motorcycle Hero Splendor Plus, bearing registration No. BR-33T/3839, which has been seized in connection with Samastipur Excise Case No. 16 of 2018 on 15.01.2018 registered under Sections-30(a) & 38(1) of the Bihar Prohibition and Excise Act, 2016.

Accusation is that 2.250 litres wine is recovered from motorcycle of the petitioner.



Learned counsel for the petitioner submits that the confiscation proceeding for the vehicle in question is pending vide Confiscation (Excise) Case No. 87 of 2018 before the Collector, Samastipur. 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 circumstances, 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 decision in the cases of Sunderbhai Ambalal Desai vs. State of Gujrat 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. 16839 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, Samastipur (Confiscating Authority) with two sureties to the extent of the value of the each 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 vehicles during pendency of the confiscating proceeding/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 vehicles 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 the 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 7 days from the date of submission of the sureties 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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