

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1356 of 2018

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Soni Devi W/o Late Bale Choudhary, R/o Vill.- Belisariff Sonar Patti Road,
P.S.- Gondapur, District- Nawada.

.... Petitioner

Versus

1. The State of Bihar Through The Principal Secretary Excise Department,
Government of Bihar Patna .
2. The District Magistrate, Nawada.
3. The Superintendent of Police, Nawada.
4. The Officer In Charge, Rajauli, P.S.- District- Nawada.
5. The Prem Nandan Jha, S.I. Rajauli, P.S.- Nawada.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Man Mohan Kumar

For the Respondent/s : Mr. Anil Kumar Sinha (GA1)

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

3. **10-08-2018** Heard learned counsel for the petitioner and
learned counsel representing the State.

Petitioner has prayed for release of the vehicle
(Bolero Pickup Van) bearing Reg. No. BR27G-1881 which
has been seized in connection with Rajouli P.S. Case No.
328/2017 on 29.10.2017 for the offence under Section 30(a)
of the Bihar Prohibition and Excise Act, 2016.

Learned counsel for the petitioner submits that the
Bolero Pickup Van was allegedly parked on the roadside
near the bus stand loaded with intoxicants in plastic
containers and in course of search neither the driver nor the
owner of the vehicle was found near the vehicle in question.
Police has seized 2400 litres toddy from the vehicle and a



confiscation proceeding has been initiated but the same has not been finalized so far.

Learned counsel submits that the vehicle is standing under the open sky for the last about 10 months by now and if it is allowed to remain there it is likely to lose its road worthiness as the parts of the vehicle are being either destroyed or are subjected to theft in absence of any security to the vehicle.

On the last date when the matter was called out on 02.07.2018, taking note of the quantity of the toddy this court had directed the State to file a counter affidavit and as prayed for on behalf of the State two weeks time was granted. No counter affidavit has been filed despite there being a lapse of over one month by now. No one appears on behalf of the petitioner when the matter is called out.

Considering the facts and circumstances of the case, as the vehicle in question is lying under the open sky for the last about 10 months, this court would direct provisional release of the vehicle within a week on production of document of ownership and registration in favour of the petitioner subject to petitioner submits a bank guarantee for the value of the vehicle in question as



indicated in the insurance document.

Apart from the above, the petitioner shall be obliged to submit an undertaking before the District Magistrate, Nawada that during the pendency of the confiscation proceeding he would not deal with the vehicle in question and shall not create any kind of encumbrance whatsoever and no third party right or interest shall be created. He would also undertake to produce the vehicle in question as and when required by the authority concerned.

Learned counsel for the petitioner has informed this court that furnishing of bank guarantee has become difficult because once the banks find that there is a case relating to Excise and Prohibition Act, despite the compliances being available to the bank they are not ready to issue a bank guarantee. In absence of any concrete material on the record, this court would not be ready to accept this plea, however in case the petitioner comes before this court with adequate material to show that despite his being prepared to obtain a bank guarantee in accordance with law by fulfilling the conditions prescribed for the bank to issue such bank guarantees the same has not been made available to him only because it relates to a case under the Excise and



Prohibition Act, this court would be considering the matter for appropriate order.

With the aforesaid direction and observation, this application is disposed off.

Rajeev/-

(Rajeev Ranjan Prasad, J)

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