

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.15469 of 2018

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Kundan Kumar, Son of Upendra Yadav, R/o Village Bishanpur Ward No. 6,
P.O. Aran, P.S. Bihar & District- Saharsa.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Department of Excise Bihar, Patna.
2. District Magistrate, Cum Collector, Saharsa.
3. Assistant Sub-Inspector Excise, Anchal Saharsa Police Station Under District Saharsa.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Diwakar Prasad Singh
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)

2 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 (Bolero Pick-up-Van) bearing Registration No. BR11GB-1770 seized in connection with Special Case No. 421 of 2017 under the provisions of the Bihar Prohibition & Excise Act, 2016. It has been stated that from the vehicle in question 311 liters illicit liquor has been recovered.

Apart from a prayer for release of the vehicle the petitioner has also prayed for quashing of the order dated 8.04.2018 passed by the Collector -cum- District Magistrate,



Saharsa in Confiscation (Excise) Case No. 72 of 2017-2018 by which a direction to confiscate the vehicle has been passed by the District Magistrate being the Confiscating Authority.

Learned counsel for the petitioner submits that for the present he would not be pressing the relief for quashing of the order dated 18.04.2018 passed by the Collector -cum- District Magistrate, Saharsa in Confiscation (Excise) Case No. 72 of 2017-2018, he, however, submits that liberty may be granted to the petitioner to challenge the confiscation order 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 in question.

Learned counsel for the petitioner submits that the vehicle is lying under open sky under the Police Station and during last one year 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.

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.

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 at this stage and during 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, Saharsa (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. 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 and shall not indulge in similar offence in future.

(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 along with the bank guarantee 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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