

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17680 of 2018

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Prahlad Kumar, Son of Nathu Prasad, Resident of Pachrukhiya Gujrauliya,
Ward No. 2, Areraj, P.S.-Malahi, District East Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar.
2. The District Magistrate, Motihari.
3. The District Excise Officer, Motihari.
4. The Officer-in-Charge, Motihari Town Police Station, District Motihari.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Surendra Kishore Thakur
For the Respondent/s : Mr. Vivek Prasad - Gp7

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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 03-12-2018 Heard learned counsel for the petitioner and learned
counsel for the State.

This application has been filed seeking provisional release of the vehicle (Three Wheeler Tempo) bearing Registration No. BR05PA-3561 seized in connection with Motihari Town P. S. Case No. 182 of 2017 dated 21.03.2017 registered under Sections 272, 273 of the Indian Penal Code and Sections 30(a), 38(a) (b) (c) of the Bihar Prohibition & Excise Act, 2016. It has been stated that from the vehicles in question 26 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 for more than one



year 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.

In the given facts and circumstances where vehicle in question is lying under open sky, losing it's 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 the petitioner on the petitioner's producing the document of ownership and registration in his name before the District Magistrate, Motihari (Confiscating Authority) with two sureties to the extent of the value 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 vehicle during the pendency of the confiscation proceeding 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 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 sureties 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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