

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.12277 of 2018

=====

Gopal Krishna Mahto S/o Late Saradhu Mahto R/o Village- Gandhanpur,
P.O.- Taradiha, P.S.Pathergama, District- Godda (Jharkhand)

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department, Patna
2. The District Magistrate, Supaul District
3. The Superintendent of Police, Supaul District
4. The S.H.O. Triveniganj P.S, District- Supaul

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Vinod Gautam

For the Respondent/s : Mr. Anil Kumar Sinha - Ga-1

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

(Per: HONOURABLE MR. RAJEEV RANJAN PRASAD)

3 18-12-2018 Heard learned counsel for the petitioner and learned
counsel for the State.

This application has been filed seeking provisional release of the vehicle (TATA 407) bearing Registration No. JH04K-9629 Chassis No. MAT455221F8F16693, Engine Number 4975P67FUY623008 and two set Samsung Mobile with Sim No. 9006985310 seized in connection with Triveniganj P. S. Case No. 132/2018 dated 07.04.2018 registered under Section 30 (a), of the Bihar Prohibition & Excise Act, 2016. It has been stated that from the vehicle in question 819 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.

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, Supaul (Confiscating Authority) with two sureties with a Bank Guarantee to the extent of the value of the vehicle as indicated in the insurance document as also release of two set Samsung Mobile with Sim No. 9006985310 without surety subject to furnishing original document of the Mobile Phone. 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 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 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 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)

Rajeev/R.R.Ojha

U			
---	--	--	--

