

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.2821 of 2018

Arising Out of PS. Case No.-364 Year-2018 Thana- ARA NAWADA District- Bhojpur

Dinesh Sharma, Son of Guljari Lal Sharma, Resident of Mohalla- Laxmi
Nagar Dadrasigate, Ward No.8, P.S.- Bhiwani District- Bhiwani State-
Hariyana.

... .. Petitioner/s

Versus

1. The State of Bihar Through its Principal Secretary Excise Department, State of Bihar, District Patna.
2. The Superintendent of Police, Ara.
3. The Officer Incharge Ara Nawada Police Station- District- Bhojpur.

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Shiv Prasad Gupta
For the Respondent/s	:	Mr. Vikash Kumar (Sc 11)

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL ORDER

2 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 956 sewing machines seized in connection with Ara Nawada P.S. Case No. 364 of 2018, Excise Case No. 922 of 2018 dated 28.5.2018 registered under Sections 30(A), 38(i) (ii), 41(i)(ii) and 47 of the Bihar Prohibition & Excise Act, 2016.

Accusation is that 956 sewing machines were recovered from the truck in question. The said consignment was booked to be delivered at Patna which was intercepted at Ara along with 6030 liters liquor.



Learned Counsel for the petitioner submits that no confiscation proceeding has been initiated for the sewing machines in question. Learned counsel for the petitioner further submits that the sewing machines are lying under open sky under the Police Station and if it is allowed to remain there for any longer time, the whole sewing machine will become a junk and if release is not allowed, 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 decisions of the Supreme Court in the case 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. 5840 of 2018 (D.B.) dated 10.12.2018.

In the given facts and circumstances where no confiscation proceeding has been initiated, let the sewing machines in question be released provisionally in favour of the petitioner on producing the document of



authority/ownership/purchase in his name before the concerned court below with two sureties along with a bank guarantee to the extent of the total MRP of the sewing machines as indicated in the authority/receipt/document. The petitioner while submitting the sureties shall also furnish the following affidavits/undertakings:-

(i) That the petitioner shall not indulge in creating any third party right or interest in respect of the sewing machines during the pendency of the confiscation proceeding and shall not alienate the sewing machine during this period.

(ii) The petitioner shall furnish an undertaking to produce the sewing machines before the confiscating authority as and when required.

(iii) Prior to release of the sewing machines, a Panchnama would be prepared by the court below wherein the photograph of the sewing machines 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 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 along with bank guarantee and the undertakings as stated above. This would, however, be subject to initiation and finalization of the confiscation proceeding if any.

(Sudhir Singh, J)

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