

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.2867 of 2018

Arising Out of PS. Case No.-331 Year-2017 Thana- PUPRI District- Sitamarhi

Rakesh Kumar Sharma S/o Ramdeo Sharma, resident of Village- Pupri ganw
Ward No. 1, P.S.- Pupri, District- Sitamarhi.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Excise Department, Patna, Bihar.
2. The District Magistrate Sitamarhi, District- Sitamarhi.
3. The Superintendent of Police Sitamarhi, District- Sitamarhi.
4. The Officer in- Charge of Pupri Police Station, P.S.- Pupri, District- Sitamarhi.
5. The Investigating Officer namely Baban Pradhan S/o not known of pupri P.S. Case No.- 331/2017 District- Sitamarhi.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Sanjay Kumar
For the Respondent/s : Mr.Vivek Prasad

CORAM: HONOURABLE MR. JUSTICE SUDHIR SINGH
ORAL ORDER

2 20-12-2018 Heard learned counsel for the petitioner and learned
counsel for the State.

This application has been filed seeking provisional release of the vehicle (Splender Pro motorcycle) bearing Registration No. BR-30F-9054 seized in connection with Pupri P.S. Case No. 331 of 2017 registered under Sections 272, 273, 290 of the Indian Penal Code and 30(a), 38, 41, 37(b)(c) of the Bihar Prohibition & Excise Act, 2016.

Accusation is that 375 ml wine along with Rs. 20,000/- (twenty thousand) is recovered from the motorcycle of the petitioner.



Learned counsel for the petitioner submits that the confiscation proceeding for the vehicle in question is pending vide Confiscation Case No. 620 of 2017 before the Collector, Sitamarhi. Learned counsel for the petitioner further 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 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 decision in the cases 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 decisions of the Hon'ble High Court, Patna passed in C.W.J.C. No. 16839 of 2018 of 2018 (D.B.) dated 03.12.2018.

In the given facts and circumstances where vehicle in question is lying under open sky, losing its' road worthiness, keeping in mind the interest of the State as well, I direct that pending finalization of the confiscation proceeding, the vehicle



in question be released provisionally in favour of the petitioner on producing the document of ownership and registration in his name before the Collector, Sitamarhi (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/appeal and shall not alienate the vehicles 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 vehicles a Panchnama would be prepared by the confiscating authority wherein the photograph of the vehicle shall be taken and will be certified by the petitioners 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 Panchnama 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 and the undertakings as stated above. This would, however, be subject to the final order passed in confiscation proceeding.

(Sudhir Singh, J)

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