

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.16194 of 2018

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Vipin Kumar @ Bipin Kumar @ Bipin Kumar Gupta Son of late Laxmi
Narayan Saw a resident of Village- Bhaisasur, Police Station- Biharsharif,
District- Nalanda.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Principal Secretary, Excise Department, Bihar,
Patna
2. The Collector Cum District Magistrate, Patna.
3. The Senior Superintendent of Police, Patna.
4. The Superintendent of Police, Patna.
5. The Sub-Divisional Police Officer, Patna City, Patna.
6. The Inspector of Excise Department, Patna.
7. The Investigating Officer of Excise, P.S. No. 188/2017

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Arvind Kumar Mouar
For the Respondent/s : Mr.Kumar Manish, SC-5

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 04-02-2019

Heard Mr. Harish Kumar, counsel appearing for the
petitioner and Mr. Madan Mohan, learned Assisting Counsel to
Standing Counsel No. 5 appearing for the State.

The writ petition is filed praying for release of



Mahindra Piago (Auto) bearing Registration No. BR-01-GF-8715, Chasis No. MA1LV2FTJH5D78126, Engine No. A7D1079995, which has been seized in connection with Special Case No. 8940 of 2017 arising from Alamganj P.S. Case No. 188 of 2017 instituted for alleged violation of the provisions of Bihar Prohibition and Excise Act, 2016.

Much prior to the filing of the writ petition before this Court, the confiscation proceeding had been initiated against the petitioner bearing Confiscation Case No. 626 of 2017-18 and vide order contained in memo no. 508 dated 29.05.2018 the vehicle in question has been confiscated.

It is the submission of Mr. Madan Mohan that despite notice being sent to the petitioner he has not responded.

Seizure of the vehicle is for the alleged recovery of 900 liters of toddy. That final order has been passed in the confiscation case, we allow the petitioner to question the same before the Appellate Authority within a period of 30 days from today. In case such an appeal is preferred within the aforesaid period accompanied 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 State is not in position to dispute the position because the Act does not allow grant of interim relief by the statutory authority.

Having heard learned counsels for the parties and in the circumstances set-forth above as well as taking of the nature of recovery, we direct that the vehicle in question be released provisionally in favour of the petitioner on production of ownership and registration with respect to vehicle in question in his name before the court below with one surety along with a Bank Guarantee or original title deed of immovable property situated within the district to the extent of the value of the vehicle as indicated in the insurance document. The petitioner while submitting the surety and the bank guarantee or the original title deed, as the case may be, 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 Panchanama would be prepared by the court below 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.

The release shall be allowed within a period of 14 days from the date of submission of the sureties and the undertakings as stated above. This release would, however, be subject to the order passed in appeal and in case the petitioner fails to take recourse to the appellate remedy within the time



allowed, the release order shall stand recalled with liberty to the
Confiscating Authority to proceed in accordance with law.

The writ petition is allowed with the
directions/observations above.

(Jyoti Saran, J)

(Arvind Srivastava, J)

mcv/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.02.2019
Transmission Date	NA

