

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1335 of 2019

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Hasan Abbas Hasan Imam, resident of Mohalla- Makhdum Sarai, Ward No. 35, Siwan, Police Station- Sarai (O.P.), District- Siwan.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Excise, Bihar, Patna.
2. The District Magistrate, Siwan.
3. The Superintendent of Police, Siwan.
4. The Officer-in-Charge of Nautan Police Station, District- Siwan.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Akhileshwar Kumar Shrivastva, Adv.
For the Respondent/s : Mr. Vikash Kumar, SC11

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE SMT. NILU AGRAWAL
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 23-01-2019

Heard learned counsel for the petitioner and learned counsel for the State.

This application has been filed seeking provisional release of the vehicle (Motorcycle) bearing Registration No. BR29AA3987, Chasis No. MD625 CF11GIN26940 Engine No. CF1NG1697627 seized in connection with Nautan P.S. Case No. 147 of 2017 registered under Section 30 (a) of the Bihar Prohibition & Excise Act, 2016. It has been stated that from the vehicle in question 12.6 liters illicit liquor have been recovered. It is submitted that no 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.

Learned counsel for the State is present and submits that in the given facts and circumstances of this case if at all the Court is willing to consider provisional release of the vehicle then interest of the State is required to be protected.

In the given facts and circumstances where no confiscation proceeding is presently pending, let 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 court below with two sureties (one local) 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 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 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 surety and the undertakings as stated above. This would, however, be subject to initiation and finalization of the confiscation proceeding if any.

The writ petition is allowed.

(Jyoti Saran, J)

Bibhash/-

(Nilu Agrawal, J)

AFR/NAFR	
CAV DATE	NA
Uploading Date	06.02.2019
Transmission Date	NA

