

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.4965 of 2018

In
Civil Writ Jurisdiction Case No.8071 of 2018

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Lilawati Kumari, D/o Nathuni Paswan, W/o Nand Kishore Ram, permanent resident of village- Motha, Post-Bhadari, Police Station and District- Arwal.
... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Excise and Prohibition, Govt. of Bihar, Patna.
 2. The District Magistrate-cum-Collector, Arwal.
 3. The Superintendent of Police, Arwal.
 4. The S.H.O., Arwal Police Station, District- Arwal.
 5. The Sub Inspector of Police cum Investigating Officer, Arwal Police Station- Arwal. Opposite Parties
- =====

Appearance :

For the Petitioner/s : Mr. Manish Kumar No-2
For the Opposite Party/s : Mr. A. K. Sinha - Ga 1

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

2 08-04-2019 We have perused the office note and since the defect has been removed by the petitioner, hence with the consent of the parties we take up the matter on the Board with a view to final disposal.

The records transpire that Motion was made before the Bench presided by Hon'ble the Chief Justice for urgent listing and when considering the matter on the administrative side that Hon'ble the Chief Justice has been pleased to direct for placing of the matter before this Bench and that is how the matter is listed before us when parties have addressed on the issue.

We have heard Mr. Manish Kumar No-2, learned Counsel for the petitioner and Mr. Pawan Kumar, learned AC to GA 1 on this application which is filed for modification of the order dated 30.04.2018 passed by a Bench presided by Hon'ble



the Chief Justice and Hon'ble Mr. Justice Sanjay Kumar in CWJC No. 8071 of 2018, whereby the writ petition has been allowed with a direction for release of the vehicle bearing registration no. BR-01PJ-0806 which has been seized in connection with Arwal P.S. Case No. 101 of 2018 for alleged violation of the provisions of Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as 'the Act').

Learned Counsel for the petitioner submits that the conditions put up by this Court for release of the vehicle in question is onerous and since this Court in the subsequent matters has modified such condition with other option as well, it may also be extended to the petitioner.

It is the submission of Mr. Manish Kumar, learned Counsel for the petitioner that it is but for this condition that even after release having been passed by this Court the vehicle stands in a seized condition. He submits that the recovery of liquor is to the tune of 90 liters IMFL and the confiscation case is yet pending before the confiscating authority i.e. the District Magistrate-cum-Collector, Arwal.

Mr. Pawan Kumar, learned AC to GA 1 opposes the prayer to submit that this Court having applied its mind, the modification application requires no interference.

We have heard learned Counsel for the parties and we have perused the records and we do appreciate the arguments of Mr. Manish Kumar, learned Counsel for the petitioner because the conditions imposed by this Court for the purpose of release of the vehicle seized for alleged violation of the provisions of 'the Act' have undergone a change with incorporation of other options as well and to that extent we are persuaded to accept the prayer of the petitioner to extend those options to the petitioner



also.

In such view of the matter, we are persuaded to modify paragraph-1 of page-2 together with the operative portion of the order dated 30.04.2018 passed in CWJC No. 8071 of 2018 which would stand substituted to read as follows:

“ Having heard learned counsel for the parties and taking note of the nature of seizure made as well as the fact that the confiscation proceeding is yet pending, we direct that the vehicle in question be released provisionally in favour of the petitioner on production of ownership and registration papers with respect to vehicle in question before the District Magistrate-cum-Collector, Arwal with one local surety alongwith 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 further.

(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 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.

The release shall be allowed within a period of 14 days from the date of production of ownership/registration papers supporting the claim of the petitioner together with one surety (local) alongwith the Bank Guarantee or title deed of immovable property situated in the district, to the extent of the value of the vehicle as indicated in the insurance document and the undertaking, as stated above. This release would, however, be subject to finalization of the confiscation proceeding. The title deed papers shall remain in safe custody of the confiscating authority subject to final decision in the confiscation proceedings.”

The conditions so present in the order dated 30.04.2018 passed in CWJC No. 8071 of 2018 stands modified to the extent stated hereinabove and shall be deemed to be pronounced as such, when the writ petition was allowed.

The modification application is allowed.

(Jyoti Saran, J)

Archana/
Surendra/-

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(Arvind Srivastava, J)

