

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.1620 of 2019

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Asharfi Kumar @ Rakesh Kumar aged about 20 years, Gender – Male, Son of Rambabu Prasad, Resident of Village-Malahi Pakari, Near Devi Asthan, Kankarbagh, Police Station-Kankarbagh, District-Patna.

... .. Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Registration, Excise and Prohibition Department Bihar Patna
2. The Excise Commissioner, Bihar Prohibition and Excise Act 2016 Department Bihar, Patna
3. The Excise Officer, Bihar Prohibition and Excise Act 2016 Department Bihar Patna
4. The District Collector, District-Patna Bihar.
5. The Superintendent of Police, District-Patna ,Bihar
6. The Officer -in -Charge of Bypass Police Station, District - Patna

... .. Respondents

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Appearance :

For the Petitioner/s : Mr.Jay Ram Prasad

For the Respondent/s : Mr.Kumar Manish (Sc5)

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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 : 29-01-2019

Heard learned counsel for the petitioner and learned counsel appearing on behalf of the State.

The petitioner prays for provisional release of the Tempo bearing registration No. BR-01PE-3138, Engine No. A3E0736685, Chasis No. D5F26020, which has been seized in connection with Bypass P.S. Case No. 344/2018 for the offences punishable under sections 30(a)/37(b) of the Bihar Prohibition and Excise Act, 2016.

It is stated by learned counsel for the petitioner that 80 litres of Country made Mahua Wine has been seized; the confiscation proceeding is yet to be initiated and the vehicle is lying under the open



sky in the police station. The seizure list supports the seizure of the tempo and 80 litres of Country made Mahua Wine.

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 to be initiated, 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 court below 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 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 production of ownership/registration papers supporting the claim of the petitioner together with one surety (local) alongwith the Bank Guarantee to the extent of the value of the vehicle as indicated in the insurance document and the undertaking, as stated above. This would, however, be subject to the final order passed in the confiscation proceeding.

With the observations above, this writ petition is allowed.

(Jyoti Saran, J)

(Arvind Srivastava, J)

Archana/
Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	01.02.2019
Transmission Date	NA

