

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2732 of 2019

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1. Tarkeshwar Ray @ Tarkeshwar Singh (Male), aged 50 years, son of Butan Singh @ Butan Rai resident of Chhihantar, P.S.- Maner, District- Patna, owner of 2 wheeler vehicle Hoonda Motor Cycle, registration no. BR-01-DB-5652.
 2. Pintu Kumar (Male), aged 48 years, son of Sri Lal Babu Ray @ Rai resident of Madhav Pur, P.S. Maner, District- Patna owner of the 3 wheeler vehicle Tempo- bearing registration no.- BR-01GF-7919.

... .. Petitioners

Versus

1. The State of Bihar represented through, Principal Secretary, Department of Excise Govt. of Bihar, Patna.
2. Officer-in- Charge, Maner Police Station.
3. Sanjiv Kumar, S.I Maner Police Station.
4. District Magistrate, Patna.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Tilak Sao
For the Respondent/s	:	Mr. Vikash Kumar (Sc11)

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 18-02-2019

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

The petitioners pray for provisional release of the Honda motorcycle bearing registration No. BR-01DB-5652, Frame No. ME4JC62 DLG- 8035023 in favour of petitioner no.1 and a 3 Wheeler tempo bearing registration No. BR01GF-7919 in favour of petitioner no.2, which have been seized in connection with Special Case No. 4686/2017 arising out of Maner P.S.Case No. 360/2017 for



the offences punishable under sections 30(a) of the Bihar Prohibition and Excise Act, 2016.

It is stated by learned counsel for the petitioner that 9 litres of India made Foreign liquor has been seized from the motorcycle of petitioner no.1 and 76½ litres of India made Foreign liquor has been seized from the 3 Wheeler tempo of petitioner no.2; the confiscation proceeding is pending and the vehicles are lying under the open sky in the police station. The seizure list supports the seizure of the motorcycle and the tempo and the Foreign liquor thereon.

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 pending, we direct that the motorcycle in question be released provisionally in favour of petitioner no.1 on production of ownership and registration with respect to vehicle in question in his name before the Collector cum District Magistrate, Patna with two sureties (one local) to the extent of the value of the vehicle as indicated in the insurance document.

The tempo in question be released provisionally in favour of petitioner no.2 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



petitioners while submitting the surety(ies) and the Bank Guarantee or the original title deed, as the case may be, shall also furnish the following affidavits/ undertakings respectively:

(i) That the vehicle(s) in question has never been involved in any offence of similar nature in past and they shall not indulge in similar offence any further.

(ii) That the petitioners 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 petitioners shall furnish an undertaking to produce the vehicle before the confiscating authority as and when required.

(iv) Prior to release of the vehicles in question, a Panchanama would be prepared by the Collector cum District Magistrate, Patna 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 petitioners shall furnish an undertaking not to challenge the said Panchanama in course of trial.

In so far as petitioner no.1 is concerned, 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, which would however be subject to finalization of the confiscating proceeding.

In so far as petitioner no. 2 is concerned, 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 would, however, be subject to the final order passed in the confiscation proceeding. The title deed papers shall remain in safe custody of the confiscating authority subject to final decision in the confiscation proceedings.

With the observations above, this writ petition is allowed.

(Jyoti Saran, J)

(Arvind Srivastava, J)

Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.02.2019
Transmission Date	NA

