

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4167 of 2019

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Kumari Lata @ Lata Chaudhari aged about 30 years (Female), W/o Madan Mohan Chaudhary, D/o Surendra Ram, Resident of Vill.- Usia, Dildarnagar, P.S.-Jamania, Distt.-Gazipur, U.P. At present address- Assachanpur, P.S.-Jamania, Distt.-Gazipur, U.P.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Excise Registration and Prohibition, Govt. of Bihar, Patna
2. The Collector Kaimur at Bhabua
3. The Superintendent of Police Kaimur at Bhabua
4. The S.H.O. Ramgarh, Kaimur at Bhabua

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Uday Pratap Singh
For the Respondent/s : Mr. Vikash Kumar (SC11)

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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 : 01-04-2019

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

The petitioner prays for quashing the order dated
16.02.2018 passed by the Collector-cum-District Magistrate,
Kaimur at Bhabua in Confiscation Case No. 10 of 2018 by
which a direction to confiscate the vehicle has been passed by
the District Magistrate being the Confiscation Authority.

Apart from the prayer for quashing the order of



confiscation, the petitioner has also prayed for provisional released of Hero Honda (Red Colour) Motorcycle bearing Registration No. UP-61E-3594, which has been seized in connection with Ramgarh P.S. Case No. 353 of 2017 for the offences punishable under Sections 30(a) and 38(i) of the Bihar Prohibition and Excise Act for recovery of 2.250 litres of IMFL.

Learned counsel for the petitioner submits that for the present he would not be pressing the relief for quashing the order dated 16.02.2018 passed by the District Magistrate, Kaimur at Bhabua in connection with Confiscation Case No. 10 of 2018. He, however, submits that liberty may be granted to the petitioner to challenge the confiscation order in an appropriate jurisdiction by filing an appeal before the Commissioner within a period of 30 days from today.

In view of the circumstances noted, we allow the petitioner to question the order of confiscation 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 petitioner submits that the vehicle is lying in the open sky in the police station and it has turned almost a junk and if not allowed to be released, the State is not going to gain anyway in confiscation proceeding. Learned counsel submits that the petitioner is willing to give such surety and undertakings which may be required to protect the interest of the State during the pendency of the appeal.

Having heard learned counsel for the parties and in the circumstances set-forth above as well as taking note of the nature of seizure made, 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 District Magistrate, Kaimur at Bhabua 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 appeal 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 got prepared by the Collector-cum-District Magistrate, Kaimur at Bhabua, 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 (one local) and the undertakings as stated above. This release of the vehicle 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.

With the observations/directions above, this writ petition is allowed.

(Jyoti Saran, J)

(Arvind Srivastava, J)

Shailendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12/04/2019
Transmission Date	NA

