

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3534 of 2019

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Md. Abul Kaish Ahmad @ Md. Abul Kaish S/o Md. Sajimuddin R/o Vill.-
Ward No.40,Rupnagarw (Rupnagara), P.s. Saharsa,Dist.-Saharsa

... .. Petitioner/s

Versus

1. The State of Bihar and Ors through the Principal Secretary, Department of Registration,Excise and Prohibition,Govt. of Bihar
2. The Excise Commissioner, Govt. of Bihar
3. The District Magistrate, Siwan
4. The Superintendent of Police, Saharsa
5. The Officer in Charge, of Basanei

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Neeraj Kumar
For the Respondent/s : Mr. Vivek Prasad (Gp7)

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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 : 28-02-2019

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

This application has been filed seeking provisional
release of the vehicle bearing Registration No. BR-19D-5015, Engine
No. HA10EHB9J10347 and Chasis No. MBLHA10ADB9J08942 which
has been seized in connection with Basnahi P.S. Case No. 108 of
2018 for the offence punishable under Sections 30(a) of Bihar
Prohibition and Excise Act, 2016.

Learned counsel for the petitioner states that as per the
seizure list 7 litres of Mahua liquor have been recovered from the
vehicle in question. It is submitted that there is no information
about confiscation proceeding.



Learned counsel for the petitioner submits that the vehicle in question is lying under open sky in 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.

Having heard learned counsel for the parties and 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 designated 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 Panchanama would be got prepared by the designated 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 sureties along with the undertakings as stated above. This release, however, would be subject to the final order passed in the confiscation proceeding, if any.

The writ petition is allowed.

(Jyoti Saran, J)

(Arvind Srivastava, J)

Brajesh/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

