

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.10612 of 2018

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Sajada Khatun wife of Salim Khan resident of Deona, PS. Barauni, District Begusarai.

... .. Petitioner

Versus

1. The State Of Bihar through the Secretary, Food & Consumer Protection Department, Government of Bihar, Patna.
2. The District Magistrate-cum-Collector, Saharsa.
3. The Sub Divisional Officer, Saharsa.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr.Dhananjaya Nath Tiwari
For the Respondent/s : Mr.S.Raza Ahmad -AAG5

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 10-04-2019 Learned counsel for the petitioner submits that the order passed by the District Magistrate cum Collector, Saharsa in Miscellaneous Case No. 05/2017 be set aside on the ground that the District Magistrate cum Collector, Saharsa has imposed onerous conditions for release of the vehicle.

Learned counsel has pointed out from the order dated 21.12.2016 passed in CWJC No. 20123/2016 by this court that while directing that the property in question be provisionally released, this court had observed that such release will be on furnishing sufficient surety/guarantee to the satisfaction of the Collector, Saharsa. It is because of this stipulation present in the order dated 21.12.2016, the Collector had to disclose the sureties to be submitted by the



petitioner.

Learned counsel submits that the direction contained in the order dated 23.06.2017 passed in Miscellaneous Case No. 05/2017 by which the Collector has now called upon the petitioner to furnish surety of one government servant and then to provide a bank guarantee to the extent of value of 25% of the vehicle are onerous condition as the petitioner being old aged lady not having access to the banking transactions is unable to provide a bank guarantee to the extent of 25% of the value of the vehicle.

It is further submitted that no government servant would be ready and willing to become a surety for on behalf of the petitioner. Learned counsel submits that for last about four years the vehicle is standing on the road side and is loosing it's worthiness with every passing day. It is further submitted that the confiscation proceeding has not been concluded till date.

Learned counsel for the State submits that the District Magistrate cum Collector, Saharsa has imposed condition with an intention to protect the interest of the State and as such no interference is required with such condition.

Having heard learned counsel for the petitioner and



learned counsel representing the State, this court finds that it is a case under Section 7 of the Essential Commodities Act read with Section 420 of the I.P.C. as the Tanker was carrying kerosene oil. The direction to provide one government employee as a surety is not a reasonable condition inasmuch as what has to be seen by the confiscating authority at this stage is as to how to protect the interest of the State. To protect the interest of the State sufficient sureties may be obtained from the petitioner by calling her to provide any immovable property valued to the extent of the value of the vehicle which may be assessed in accordance with law. In some of the cases, this court has while passing the provisional order for release of the vehicles provided a condition that one of the sureties will be a local person having sufficient immovable property in his name.

In the present case, in the opinion of this court the order dated 23.06.2017 is liable to be set aside. It is set aside accordingly. The District Magistrate cum Collector, Saharsa is directed to pass a fresh order in Miscellaneous Case No. 05/2017 within a period of 15 days from the date of receipt/production of a copy of this order. This court would expect that while passing the fresh order the District



Magistrate cum Collector, Saharsa shall keep in mind the various orders of this court passed in similar circumstances directing provisional release of the vehicles.

This writ application stands disposed of accordingly.

Learned counsel for the petitioner prays that the order may be sent through Fax at his cost. Let it be done.

(Rajeev Ranjan Prasad, J)

Rajeev/-

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