

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16026 of 2018

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Purshotam Kumawat S/o JaiKishan R/o Village Kanti Bundi, P.S. Bundi
Sadar, District Bundi Rajasthan.

... .. Petitioner/s

Versus

1. The State Of Bihar and Ors
2. The District Magistrate -cum- District Collector, Darbhanga.
3. The Superintendent of Police, Darbhanga.
4. The Excise of Superintendent, Darbhanga.
5. The Station House Officer, P.S. A.P.M. Darbhanga.
6. The Investigating Officer, of A.P.M., P.S. Case No. 53/1.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Manish Chandra Gandhi, Adv.
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 : 08-04-2019

It is following the order passed by us that a counter affidavit is filed on behalf of the District Magistrate -cum- Collector, Darbhanga to inform that a confiscation case bearing Confiscation Case No. 149 of 2018 had been initiated in the matter and is pending disposal.

Heard Mr. Manish Chandra Gandhi, learned counsel for the petitioner and Mr. Vikash Kumar, learned S.C-11 appearing for the State.

The petitioner prays for provisional release of the vehicle (Truck) bearing Registration No. RJ-33-GA-1390, which has been



seized in connection with A.P.M. P.S. Case No. 52 of 2018 for the offence punishable under Sections 30(a) and 30(g) of the Bihar Prohibition and Excise Act, 2016.

It is stated by learned counsel for the petitioner that though seizure list reflects a seizure of 3110.4 litres of IMFL (360 cartons containing 17280 bottles with each bottle containing 180 M.L. of liquor) but the F.I.R. would also confirm a recovery of 2592 litres of IMFL only (300 cartons containing 14400 bottles with each bottle containing 180 M.L. of liquor) from the Truck in question and the remaining 518.4 litres of IMFL (60 cartons containing 2880 bottles, each containing 180 M.L. of liquor) was from the house. According to Mr. Gandhi, only 300 cartons have been recovered from the Truck which would mean a recovery of 2592 litres of IMFL. He further submits that confiscation case is pending in which the petitioner has filed his appearance but it does not progress and the vehicle in question is lying under the open sky in the police station.

Mr. Vikash Kumar, learned S.C.-11 appearing for the State opposing the prayer submits that the recovery is of commercial nature and itself confirms the conduct of the petitioner because such huge quantity of recovery indicates that the petitioner is involved in illegal business. He, however, submits that in case this Court would be persuaded with the arguments advanced on behalf of the petitioner, necessary safeguards may be required to protect the interest of the State.



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 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 -cum- Collector, Darbhanga with one local surety along with 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 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, if any, 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 District Magistrate -cum- Collector,



Darbhanga (Confiscating Authority) 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 submissions of the sureties, the Bank Guarantee or title deed as the case may be together with the undertakings as stated above which shall remain in the custody of the Confiscating Authority. The deposit of the sureties etc. and the release, however, would be subject to the final order passed in the confiscation proceeding.

With the observations, this writ petition is allowed.

(Jyoti Saran, J)

(Arvind Srivastava, J)

Brajesh/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	17.04.2018.
Transmission Date	

