

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16379 of 2018

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Md. Anwar Hussain S/o Ishaque Hussain, R/o P.W.D. Colony, Near Gas
Godown P.S.-Dehri, District-Rohtas Bihar.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Excise Department,
Government of Bihar, Old Secretariat, Patna.
2. The District Magistrate, Rohtas.
3. The Superintendent of Police, Rohtas.
4. The District Supply Officer, Rohtas.
5. The S.H.O., Indrapuri, District-Rohtas.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Lal Bahadur 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 : 04-02-2019

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

This matter was heard and since the learned
counsel for the State had invited attention of this Court that the
order of confiscation was passed as back as on 22.06.2017 and
a period of almost 18 months had been passed since then, the
parties were directed to verify the position as to whether the
vehicle has been auctioned.

This order was passed on 21.01.2019 and the
matter was once earlier also adjourned but learned counsel for



the State is not in a position to get instruction on the issue.

On the other hand, learned counsel for the petitioner submits that the vehicle has not been auctioned.

The writ petition is pending for release of Tempo bearing Chassis No. MD440KAPL30A195725, Engine No. R6G2808249, which has been seized in connection with Indrapuri P.S. Case No. 94 of 2017, D.R. No. 370 of 2017 instituted for the offence under section 411 of the Indian Penal Code and section 30(a) of the Bihar Prohibition and Excise Act, 2016.

Much prior to the filing of the writ petition before this Court, the confiscation proceeding had been initiated against the petitioner bearing Confiscation Case No. 40 of 2017 and vide order dated 22.06.2017 the vehicle in question has been confiscated.

Seizure of the vehicle is for the alleged recovery of 6.8 liters of countrymade liquor. That final order has been passed in the confiscation case, we allow the petitioner to question the same 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 State is not in position to dispute the position because the Act does not allow grant of interim relief by the statutory authority.

Having heard learned counsel for the parties and taking note of the nature of seizure made as well as the fact that final orders have been passed in the confiscation proceeding, 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 court below with two sureties 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 further.

(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 prepared by the 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 and the undertakings as stated above. This release 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)

mcv/shailendra-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.02.2019
Transmission Date	NA

