

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.16579 of 2018

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Irshad Anwar S/o Md. Ansar Ahamad Resident of Village-Turki
Chamukhi, P.S.-Mushahari, District-Muzafarpur.

... .. Petitioner/s

Versus

1. The State Of Bihar through Principal Secretary, Govt. of Bihar, Excise Department, Patna.
2. Collector-Cum-District Magistrate, Supaul.
3. Senior Superintendent of Police, Supaul.
4. Excise Superintend, Supaul.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Arun, Adv.
For the Respondent/s : Mr. Kumar Manish- SC-5

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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 for the State.

This application has been filed seeking provisional
release of the vehicle (TATA Truck) bearing Registration No. BR-
06GB-6774 which has been seized in connection with Chhatapur
P.S. Case No. 20 of 2018 for the alleged violation of the provisions of
Bihar Prohibition and Excise Act, 2016.

Learned Assisting counsel to S.C.-5 appearing for the State
informs that for the alleged recovery of 2785.395 litres of IMFL
from the vehicle in question, confiscation proceeding bearing
Confiscation Case No. 76 of 2018 was initiated and final order has



been passed on 12.01.2019 by the Confiscating Authority, a copy of which is enclosed as Annexure-A to the counter affidavit.

Learned counsel for the petitioner submits that since the final order has been passed in Confiscation Case No. 76 of 2018 insofar as TATA Truck bearing registration No. BR-06GB-6774 is concerned, liberty may be granted to the petitioner to challenge the order of confiscation in an appropriate jurisdiction by filing an appeal before the Commissioner within a period of 30 days from today.

In the circumstance noted where final orders have been passed in the confiscation proceedings, we grant liberty to the petitioner to challenge 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 together 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 dispose of expeditiously.

Learned counsel for the petitioner further submits that as because the appellate authority has no power to pass an interim order of release, he would press this application for provisional release of the vehicle in question. He submits that 2785.395 litres of IMFL have been recovered from the vehicle in question and the vehicle is lying under the open sky in the Police



Station and if the release is not allowed, it would turn into a junk and the State is not going to gain by the vehicle turning junk. He further submits that the petitioner is willing to provide such surety and undertakings which may be required to protect the interest of the petitioner and the State, during the pendency of the appeal.

Learned counsel for the State submits that in the given facts and circumstances of this case if at all the Court is willing to consider provisional release of the vehicle then interest of the State is required to be protected.

Bearing note of the order of release passed in similar circumstance in C.W.J.C. No.8513 of 2018 whereby a provisional release has been allowed during the pendency of appeal subject to conditions imposed to protect the interest of the State, we take a similar view in the present case as well.

Let the vehicle in question be accordingly released provisionally in favour of the petitioner on production of ownership and registration with respect to vehicle in question in his name before the Collector -cum- District Magistrate, Supaul (Confiscating Authority) with one 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 Collector -cum- District Magistrate, Supaul 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 one surety along with the Bank Guarantee and the undertakings as stated above. This release, however, would be subject to the final order passed in the appeal.

We make it clarify that if the petitioner fails to present an appeal within 30 days as given above, the order of provisional



release shall stand withdrawn and the Confiscating Authority shall be at liberty to proceed in accordance with law.

With the observations and direction above, this writ petition is allowed.

(Jyoti Saran, J)

(Arvind Srivastava, J)

Brajesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	11.04.2019.
Transmission Date	

