

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18212 of 2018

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Akhilesh Tiwari, S/o Raj Narayan Tiwari, R/o Village - Maldah, Post - Ben
Tiyari, P.S. Iliya, District Chandauli Uttar Pradesh.

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The Principal Secretary, Excise Department, Govt. of Bihar, Patna.
3. The District Magistrate, Kaimur at Bhabua.
4. The Superintendent of Police, Kaimur at Bhabua.
5. The Officer In-Charge, P.S. Chand, District - Chandauli.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashutosh Tripathy
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 : 11-03-2019

Heard learned counsel for the petitioner and
learned counsel appearing on behalf of the state.

The writ petition is filed praying for release of
Magic Van Mahindra Supro Maxi Truck bearing Registration No.
UP-67-Q-8732, which has been seized in connection with Chand
P.S. Case No. 100 of 2018 for the offences punishable under



Sections 30(a) and 37(b) of the Bihar Prohibition and Excise Act.

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. 62 of 2018 and vide order dated 31.07.2018 the vehicle in question has been confiscated.

Seizure of the vehicle is for the alleged recovery of one liter of Beer. The 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 a position



to dispute the same 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 District Magistrate, Kaimur at Bhabua 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 Collector-cum-District Magistrate, Kaimur at Bhabua, 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 proceeding in accordance with law.

With the observations/directions above, this writ petition is allowed.

(Jyoti Saran, J)

(Arvind Srivastava, J)

Shailendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.03.2019
Transmission Date	NA

