

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.18620 of 2018

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Anand Das Son of Late Tapan Das, resident of Village- Raghunath Bati, 5
Long Damdama, P.S.- Gangarampur, District- South Dinajpur West Bengal.

... .. Petitioner/s

Versus

1. The State Of Bihar through Secretary of Excise Department, Bihar at Patna
2. The Collector-cum- District Magistrate, Kishanganj.
3. Deputy Commissioner of Excise, Kishanganj, District- Kishanganj.
4. Sub Inspector Excise, Kishanganj/ Bahadurgaj, Circle, District- Kishanganj.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Raj Kumar
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 : 01-04-2019

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

Petitioner prays for quashing the order dated
08.08.2017 passed by the District Magistrate, Kishanganj in
Case No. 17 of 2016 by which a direction to confiscate the
vehicle has been passed by the District Magistrate being the
Confiscating Authority.

Apart from the prayer for quashing the order of
confiscation, the petitioner has also prayed for provisional
release of Renault Scala RXL Car bearing Registration No.



WB-62E-5151, Chasis No. MEEAHBA41C9001868, Engine No. K9KE424E021831, which has been seized in connection with Complaint Case No. 427 of 2016 for the offences punishable under Sections 47(a) and 53(a) of the Bihar Prohibition and Excise Act for recovery of 300 ml of I.M.F.L.

Learned counsel for the petitioner submits that for the present he would not be pressing the relief for quashing the order dated 08.08.2017 passed by the District Magistrate, Kishanganj in Case No. 17 of 2016. He, however, submits that liberty may be granted to the petitioner to challenge the confiscation order in an appropriate jurisdiction by filing an appeal before the Commissioner within a period of 30 days from today.

In view of the circumstances noted, we allow the petitioner to question 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 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 petitioner submits that the vehicle is lying in the open sky in the police station and it has turned almost a junk and if not allowed to be released, the State is not going to gain anyway in confiscation proceeding. Learned counsel submit that the petitioner is willing to give such surety and undertakings which may be required to protect the interest of the State during the pendency of the appeal.

Having heard learned counsel for the parties and in the circumstances discussed above, 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, Kishanganj 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 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 appeal 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 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 submission of the sureties (one local) and the undertakings as stated above. This release of the vehicle 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/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	10.04.2019
Transmission Date	NA

