

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3305 of 2019

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Gagandev Ray @ Gagan Dev Raut S/o Jagdev Raut Vill.-Karmawa, P.s.-
Dhaka, Distt.-East Champaran

... .. Petitioner/s

Versus

1. The State of Bihar and Ors through the Principal Secretary Excise Department, Govt. of Bihar, Patna
2. The Divisional Commissioner Tirhut Commissioner, Muzaffarpur
3. The District Magistrate-cum-Collector East Champaran at Motihari
4. The Superintendent of Police East Champaran at Motihari
5. The S.H.O. Kundwa Chainpur Police Station, East Champaran at Motihari
6. The Investigating Officer Kundwa Chainpur P.s. Case No. 174/2017, Kundwa Chainpur police Station, East Champaran

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar Singh, Adv.
For the Respondent/s : Mr. Vivek Prasad (GP-7)

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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 : 22-02-2019

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

This application has been filed seeking provisional
release of the Hero Super Splendor motorcycle bearing Registration
No. BR-30L9365, Engine No. JA05ECF9C12862 and Chasis No.
MBLJA05EMF9C12651 which has been seized in connection with
Kundwa Chainpur P.S. Case No. 174 of 2017 for the offence
punishable under Section 30(a) of Bihar Prohibition and Excise Act,
2016.

Learned counsel for the petitioner states that as per the
seizure list 28.5 litres of Nepali Saufi have been recovered from the



vehicle in question. It is submitted no confiscation proceeding is pending with respect to vehicle in question.

Learned counsel for the petitioner submits that the vehicle in question is lying under open sky in the Police Station and if release is not allowed the vehicle is likely to become a junk and in such circumstance, the State is not going to gain anyway in confiscation proceeding. Learned counsel submits that the petitioner is willing to provide such surety and undertakings which may be required to protect the interest of the State during the pendency of the confiscation.

Having heard learned counsel for the parties and in the given facts and circumstances where no confiscation proceeding is presently pending, let the vehicle in question be released provisionally in favour of the petitioner on the petitioner's producing the document of ownership and registration in his name before designated Court below 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 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 along with the undertakings as stated above. This release, however, would be subject to final order passed in the confiscation proceeding if any.

The writ petition is allowed.

(Jyoti Saran, J)

(Arvind Srivastava, J)

brajesh/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

