

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.3690 of 2019

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Shaligram Mishra, aged about 64 years, Male, son of R.Mishra, resident of
1/7 Ganpath Rai Khemka Lane, P.S- Liluah, District- Howrah, West Bengal-
711204

... .. Petitioner/s

Versus

1. The State of Bihar through the Chief Secretary, Government of Bihar, Patna
2. The District Magistrate, Gaya
3. The Senior S.P., Gaya
4. The Inspector of Police Cum Officer in Charge, Kotwali P.S. Gaya
5. Assistant Excise Commissioner, Gaya

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ram Hriday Prasad, Advocate
For the Respondent/s : Mr. Anil Kumar Sinha (GA1)

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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 : 05-03-2019

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

The writ petition is filed praying for release of
Tata Indica vehicle bearing Registration No. WB-12B-1947,
which has been seized in connection with Kotwali P.S. Case No.
127 of 2018 for the offences punishable under Sections
30(a)/37(b) 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. 168 of 2018 and vide order dated 06.11.2018 the vehicle in question has been confiscated.

Seizure of the vehicle is for the alleged recovery of 375 ml. IMFL. Since 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 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



the 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, Gaya 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 District Magistrate, Gaya 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)

Shailendra/

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	12.03.2019
Transmission Date	N/A

