

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.4823 of 2019

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Laldev Sharma, S/o Late Mahabir Das @ Mahavir Sharma, Resident of
Village-Ward No.08, Sundari,P.S. Kursakanta (Kurari),Dist.-Araria

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Excise Department, Govt. of Bihar, Patna.
2. The District Magistrate-cum- Collector,Araria.
3. The Senior Superintendent of Police, Araria.
4. The S.H.O. Kursakanta Police Station, Araria.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Nishant Kumar Sinha, Adv.
For the Respondent/s : Mr. Vivek Prasad, GP-7

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 17-05-2019

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

This application has been filed seeking provisional
release of the Motorcycle bearing registration No. BR38D-7820
seized in connection with Kursakanta (Kuari) P.S. Case No.218 of
2017 registered under section 30(a) of the Bihar Prohibition and
Excise Act, 2016.

Apart from a prayer for release of the vehicle the
petitioner has also prayed for quashing of the order dated
27.07.2018 passed by the Collector-cum-District Magistrate,
Araria in Confiscation Case No.136 of 2017-18 by which a
direction to confiscate the vehicle has been passed by the District
Magistrate being the Confiscating Authority.



Learned Counsel for the petitioner submits that for the present he would not be pressing the relief for quashing of the order dated 27.07.2018 passed by the Collector-cum-District Magistrate, Araria in Confiscation Case No.136 of 2017-18, 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 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 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 9 litres of Nepali liquor has been seized; the vehicle is lying under open sky in the Police Station during last more than one and half year and if the release is not allowed, it would turn into a junk. He submits that the State is not going to gain by the vehicle turning junk. Learned counsel further submits that the petitioner is willing to provide such surety and undertakings which may be required to



protect the interest of the petitioner as well the State, during the pendency of the appeal.

Learned Counsel for the State is present and 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.

Having heard learned counsel for the parties and in the circumstances set-forth above as well as taking note of the nature of seizure made, we direct that the vehicle in question be released provisionally in favour of the petitioner, if not auctioned, on the production of the document of ownership and registration in his name before the District Magistrate, Araria (Confiscating Authority) with two sureties to the extent of the value of the vehicle as indicated in the insurance document.

The petitioner while submitting the surety bond 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 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 Panchnama 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 undertake not to challenge the said Panchanama in course of trial.

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.

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 would, however, be subject to the order passed in appeal.

The writ petition is allowed with the directions/observations above.

(Jyoti Saran, J)

(Anjani Kumar Sharan, J)

skpathak/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.05.2019
Transmission Date	NA

