

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.6679 of 2019**

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1. Sanjay Singh, S/o Raghubir Singh, Sector No.31 Nithari Noida, Police Station-Sector 20, District-Gautam Buddha Nagar.
2. Birendra Sah, S/o Jameli Sah, Resident of Village- Rampur Punrwas, Tola-Ramdatt Patti, Post Office- Nemua, Ward No.06, Police Station- Supaul, District-Supaul.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Excise and Prohibition, Govt. of Bihar, Patna.
2. The District Magistrate cum Collector, Supaul
3. The District Excise Officer, Supaul.
4. The District Transport Officer, Supaul.
5. The Superintendent of Police, Supaul.
6. The Officer-in-Charge, Supaul Police Station, District-Supaul.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Shekhar 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 PARTHA SARTHY**

**ORAL JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)**

**Date : 01-07-2019**

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

While the petitioner no.1 prays for provisional release of the Toyota UTSGD Car bearing registration No. UP16FT-2442, petitioner no.2 prays for provisional release of Splender Pro Motorcycle bearing Registration No.BR50D-7741 seized in connection with Excise Execution Case No. 312 of 2018 arising out of Supaul P.S. Case No.522 of 2018 under the provisions of the Bihar Prohibition and Excise Act, 2016.



Apart from a prayer for release of the vehicle(s) the petitioners have also prayed for quashing of the order dated 12.01.2019 passed by the Collector-cum-District Magistrate, Supaul in Excise Execution Case No. 312 of 2018 by which a direction to confiscate the vehicle(s) has been passed by the District Magistrate being the Confiscating Authority.

Learned Counsel for the petitioners submits that for the present he would not be pressing the relief for quashing of the order dated 12.01.2019 passed by the Collector-cum-District Magistrate, Supaul in Excise Execution Case No. 312 of 2018 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 petitioners 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 petitioners were prosecuting his remedy before this Court and the appeal shall be heard on its own merit and disposed of expeditiously.

Learned Counsel for the petitioners, 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 vehicles in question.

It is stated by learned counsel for the petitioners that while 82.375 litres of India Made Foreign Liquor has been seized from the Car, 1.5 litres of India Made Foreign Liquor has been seized from the Motorcycle; the vehicles are lying under open sky in the Police Station during last nine months 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 vehicles turning junk. Learned Counsel further submits that the petitioners are 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 vehicles then interest of the State is required to be protected.

In the circumstances discussed we pass the following order:

In so far as the Toyota Car of petitioner no.1 is concerned, let the same be accordingly released provisionally in favour of the petitioner no.1 on the production of the document of ownership and registration in his name before the District Magistrate, Supaul (Confiscating Authority) with one surety (local) along with a Bank Guarantee or original title deed to the extent of the value of the vehicle as indicated in the insurance document.

In so far as the motorcycle is concerned, the same be released provisionally in favour of the petitioner no.2 on the production of ownership and registration with respect to the vehicle in his name before the District Magistrate, Supaul (Confiscating Authority) with two sureties to the extent of the value of the vehicle as indicated in the insurance documents.

The petitioners while submitting their surety and Bank Guarantee or the original title deed, as the case may be, shall also furnish the following affidavits/undertakings individually:-

(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 petitioners 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 petitioners 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 petitioners and the same shall be kept on record so that in future if so required it may be used as a secondary evidence. The petitioners shall undertake not to challenge the said Panchanama in course of trial.

If the petitioners fail to file their present appeal(s) 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)**

**( Partha Sarthy, J)**

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