

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5179 of 2019

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Tamanna Hussain, aged about 41 years, Gender- Male, son of Md. Sabir Khan
resident of Near Jahid Master, Mohalla- Nawadih, P.S.- Aurangabad Sadar,
District- Aurangabad.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Excise Commissioner, Govt. of Bihar, Patna.
2. The District Magistrate, Aurangabad District- Aurangabad.
3. The Excise Superintendent, Aurangabad District- Aurangabad.
4. The Station House Officer, Narai Kala Khurd P.S.- Narari Kala Khurd,
District- Aurangabad.
5. Lalan Singh son of Tapeswar Singh resident of Village- Igunahi, P.S.- Mali,
District- Aurangabad.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Niraj Kumar
For the Respondent/s : Mr.Vikash Kumar (SC11)

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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 : 08-04-2019

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

The writ petition is filed praying for release of
Bolero vehicle bearing Registration No. JH-17D-4347, which
has been seized in connection with Narari Kala Khurd P.S.
Case No. 10 of 2017 (Excise Case No. 292 of 2017) instituted
for the offence under sections 30(a), 38 of the Bihar
Prohibition and Excise Act, 2016.



Apart from the prayer for release, petitioner has also prayed for quashing of the order dated 06.10.2017 passed by the District Magistrate, Aurangabad in Excise Case No. 292 of 2017 arising out of Narari Kala Khurd P.S. Case No. 10 of 2017, whereby the vehicle in question has been confiscated. Seizure of the vehicle is for the alleged recovery of 10 liters of country liquor.

Learned counsel for the petitioner submits that for the present, he would not be pressing this writ petition as against the order of confiscation. 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 circumstances noted, liberty is granted 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, 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 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 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, Aurangabad with two sureties 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, the District Magistrate, Auraganbad would got prepared a Panchanama 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 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	14.04.2019
Transmission Date	NA

