

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5444 of 2019

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Mukesh Baitha @ Mukesh Kumar (Male) aged about 29 years, Son of Jitan Baitha, Resident of Village- Gosai Banua (Turki), Police station- Minapur, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Registration, Excise and Prohibition Department, Government of Bihar, Patna.
2. The Principal Secretary Registration, Excise and Prohibition Department, Government of Bihar, Patna.
3. The Collector- cum - District Magistrate, Sheohar.
4. The Superintendent of Excise, Sheohar.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Pushpendra Kumar Singh
For the Respondent/s : Mr. Kumar Manish (SC 5)

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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 : 12-04-2019

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

The writ petition is filed praying for release of
Auto Three Wheeler bearing Registration No. BR-06PC-6391,
Chassis No. MCCKRTL15KP012597, Engine No.
R4M2596197, which has been seized in connection with
Confiscation Case No. 151 of 2018 arising out of Tariyani P.S.



Case No. 87 of 2018 instituted for the alleged offences punishable under sections 30(a) and 47 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. 151 of 2018 and vide order dated 07.01.2019 the vehicle in question has been confiscated.

Seizure of the vehicle is for the alleged recovery of 125 liters of country liquor. That the final order has been passed in the confiscation case, we allowed 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 in the circumstances set-forth above as well as taking note of the nature of seizure made, we direct the District Magistrate-cum-Collector, Sheohar 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 with one surety along with a Bank Guarantee or original title deed of immovable property situated within the district to the extent of the value of the vehicle as indicated in the insurance document. The petitioner while submitting the surety and the bank guarantee or the original title deed, as the case may be, 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



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 *Panchanama* would be got prepared by the Collector-cum-District Magistrate, Sheohar, 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)

Shailendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	22.04.2019
Transmission Date	NA

