

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8694 of 2019

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Monu @ Monu Siddiqui Son of Tasaur Siddiqui @ Tasaur Resident of
Village- Lohta (Dhamariya), P.S.- Lohta, District- Varanasi (U.P.)

... .. Petitioner/s

Versus

1. The State of Bihar Through the Principal Secretary, Department of Excise,
Govt. of Bihar, Patna.
2. The Superintendent Excise, Kaimur at Bhabua.
3. The Sub- Inspector Excise, District- Kaimur at Bhabua.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Parwej Khan, Advocate
For the Respondent/s : Mr.Kumar Manish (Sc5)

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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 : 09-07-2019

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

The petitioner is owner of of the Auto Rickshaw and prays
for provisional released of the said vehicle bearing Registration No.
UP-65FT7404, Chassis No. MD2A45AYOHWG43786, Engine No.
AZYWHG10145, which has been seized in connection with Excise
Case No. 26 of 2019 for the offences punishable under Section30(a)
of the Bihar Prohibition and Excise Act for recovery of 89.340 litres
of IMFL.

Learned counsel for the petitioner submits that the District
Magistrate, Kaimur at Bhabhua has passed the confiscation order on
11.02.2019 in Confiscation Case No. 05 of 2019. 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 view of the circumstances noted, we allow the petitioner to question 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 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 petitioner submits that the vehicle is lying in the open sky in the police station and has been seized on alleged recovery of 89.340 litres of IMFL, has turned almost a junk. Learned counsel submits that the petitioner is willing to give such surety and undertakings which may be required to protect the interest of the State during the pendency of the appeal.

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 on production of ownership and registration papers with respect to vehicle in question before the confiscating authority with one surety (local) alongwith 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 the appeal 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 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 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 production of ownership/registration papers supporting the claim of the petitioner together with one surety (local) alongwith the Bank Guarantee or title deed of immovable property situated in the district, to the extent of the value of the vehicle as indicated in the insurance document and the undertaking, as stated above. This release would, however, be subject to initiation and finalization of the appeal proceeding. The title deed papers shall remain in safe custody of the confiscating authority subject to final decision in the appeal proceedings.

In case the petitioner fails to avail of the appellate remedy within 30 days from today, this order shall stand recalled and the confiscating authority shall be at liberty to proceed in accordance with law.

With the observations above, this writ petition is allowed.

(Jyoti Saran, J)

(Partha Sarthy, J)

sushma/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	23.7.19
Transmission Date	NA

