

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.6956 of 2019

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Upendra Chauhan (Male aged about 28 years), S/o Gorelal Chauhan, resident of Village- Pindparwa, P.O.- Pakribarawan, P.S.- Pakribarawan, Distt.- Nawada

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department, Govt. of Bihar, Patna
2. The Excise Commissioner, Bihar at Patna
3. The District Magistrate-cum-Collector, Jamui
4. The Superintendent of Police, Jamui
5. The Superintendent Excise, Jamui
6. The Sub divisional Police Officer, Jamui
7. The S.H.O., Khaira Police Station, Jamui

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Birendra Kumar, Advocate
For the Respondent/s : Mr.Kumar Manish (SC5)

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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 : 16-05-2019

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

The petitioner prays for quashing the order dated 25.01.2019 passed by the District Magistrate-cum-Collector, Jamui in Confiscation Case No. 63 of 2018 by which a direction to confiscate the vehicle has been passed by the District Magistrate being the Confiscation Authority.



Apart from the prayer for quashing the order of confiscation, the petitioner has also prayed for provisional released of Scorpio bearing Registration No. BR 21P-3567, which has been seized in connection with Khaira P.S. Case No. 126 of 2018 for the offences punishable under Sections 272, 273/34 of the Indian Penal Code and Sections 30(a) and 38(1) of the Bihar Prohibition and Excise Act for recovery of 101 litres of liquor.

Learned counsel for the petitioner submits that for the present he would not be pressing the relief for quashing the order dated 25.01.2019 passed by the District Magistrate-cum-Collector, Jamui in connection with Confiscation Case No. 63 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 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 it has turned almost a junk and if not allowed to be released, the State is not going to gain anyway in confiscation proceeding. 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 taking note of the nature of seizure made as well as the fact that the confiscation proceeding is pending, 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-cum-Collector, Jamui 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 District Magistrate-cum-Collector, Jamui, 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)

(Anjani Kumar Sharan, J)

Nasimul/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	22-05-2019
Transmission Date	N/A

