

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8544 of 2019

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1. Rajendra Yadav @ Rajendra Prasad Yadav, S/o Late Manrup Yadav, resident of Village- Mahua, P.O.- Hariyahi, P.s.- Nirmali, District- Supaul.
 2. Sanjay Kumar, S/o Rajendra Yadav @ Rajendra Prasad Yadav, resident of Village- Mahua, P.O.- Hariyahi, P.S.- Nirmali, District- Supaul.

... .. Petitioner/s

Versus

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

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Pranav Kumar Jha, Adv.
For the Respondent/s : Mr. Vikash Kumar, SC-11

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 08-07-2019

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

While the petitioner no.1 prays for provisional release of the Mahindra Bolero Pick Up bearing registration No.BR11GA4581, the petitioner no.2 prays for release of BAU Avenger 200 DTSI ES motorcycle bearing Registration No.BR50H-2714, which have been seized in connection with Nirmali P.S. Case No.97 of 2018 for the offences punishable under sections 30(A) of the Bihar Prohibition and Excise Act, 2016.



Learned counsel for the petitioner submits that although recovery of 1284 litres of Nepali liquor is from the Bolero Pick Up Van bearing Registration No.BR11GA4581, there is no recovery from the motorcycle which was standing behind the Bolero Pick Up and merely on suspicion it has also been seized. He further submits that the confiscation proceeding is pending and the vehicles are lying under the open sky in the police station. The seizure list supports the seizure of the Pick Up Van and motorcycle and 1284 litres of Nepali liquor from the Pick Up Van.

In so far as the Pick Up Van is concerned, 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 no.1 on production of ownership and registration papers with respect to vehicle in question before the Collector cum District Magistrate, Supaul 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 no.1 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 no.1 shall not indulge in creating any third party right or interest in respect of the vehicle during the pendency of the confiscation proceeding and shall not alienate the vehicle during this period.



(iii) The petitioner no.1 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 Collector cum District Magistrate, Supaul wherein the photograph of the vehicle shall be taken and will be certified by the petitioner no.1 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 no.1 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 no.1 together with one surety along with 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 would, however, be subject to the final order passed in the confiscation proceeding. The title deed papers shall remain in safe custody of the confiscating authority subject to final decision in the confiscation proceedings.

In so far as the prayer of petitioner no.2 for release of motorcycle is concerned, having heard learned counsel for the parties and taking note of the legal positions settled by this Court in the case of **Diwakar Kumar Singh Vs. The State of Bihar through the Principal Secretary, Excise Department & Ors.** reported in **2018(3) PLJR 403**, we direct for release of the motorcycle in question in favour of the petitioner no.2 within 14 days on furnishing/production of the document showing the ownership of the vehicle and registration certificate in the name of



the petitioner no.2 supporting the claim of the petitioner no.2 before the Collector cum District Magistrate, Supaul because neither the F.I.R. nor the seizure list reflects any reason for proceeding to be continued against the vehicle in question.

Since nothing has been recovered from the motorcycle, there is no question of submission of any surety bond in view of the judgment of the Hon’ble Division Bench of this Court.

With the observation above, this writ petition is allowed.

(Jyoti Saran, J)

(Partha Sarthy, J)

skpathak/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	18.07.2019
Transmission Date	NA

