

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9379 of 2019

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Anil Kumar, Son of Raghu Nandan Prasad, R/o Village- Near Urdu School,
Panchu Sudhi Tola, P.S. Hisua, District- Nawada.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Bihar Prohibition and Excise, Bihar, Patna.
2. The Collector-Cum-District Magistrate, Gaya.
3. The Superintendent of Police, Gaya.
4. The Superintendent of Excise, Gaya.
5. The S.H.O. Sherghati, P.S. District- Gaya.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar Sinha, Adv.
For the Respondent/s : Mr. Vivek Prasad, GP-7

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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 : 15-07-2019

At the outset learned counsel for the petitioner submitted that due to typographical error the prayer for release of mobile phone was not typed in paragraph 1 of the writ petition and as such leave is sought to make correction in the prayer portion of the writ petition. Leave is granted. Let learned counsel for the petitioner make necessary correction in paragraph no.1 as also in the prayer portion of the writ petition in the Court's pleadings as well as in the pleadings of the State.

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

The petitioner prays for provisional release of the Honda Motorcycle bearing registration No. **BR2J-0193**, Engine No. **JC40E9015525**, Chasis No. E4JC402H88010489 and Redmi mobile phone, which have been seized in connection with Sherghati P.S. Case



No.313 of 2018 for the offences punishable under sections 272, 273, 414 and 34 of the Indian Penal Code and section 30(a) of the Bihar Prohibition and Excise Act, 2016.

It is stated by learned counsel for the petitioner that 108 litres of beer has been seized; the confiscation proceeding is yet to be initiated and the vehicle is lying under the open sky in the police station. The seizure list supports the seizure of the motorcycle, mobile phone and 108 litres of beer.

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 yet to be initiated, we direct that the vehicle and the mobile in question be released provisionally in favour of the petitioner on production of ownership and registration papers with respect to vehicle and mobile in question before the designated court below 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 the confiscation 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 designated court below 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 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 designated court below subject to final decision in the confiscation proceedings.

With the observations above, this writ petition is allowed.

(Jyoti Saran, J)

(Partha Sarthy, J)

skpathak/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.07.2019
Transmission Date	NA

