

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.9700 of 2019

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Vikash Kumar aged about 26 years (M), son of Khakhai Yadav, resident of village- Paharpur, P.O. Bhaddi, Police Station-Sour Bazar, District-Saharsa.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Excise, Government of Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The District Magistrate, Araria.
4. The Superintendent of Police, Araria.
5. The Superintendent of Excise, Araria.
6. The S.H.O. Araria Police Station, District-Araria.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Mukesh Kumar Rana, 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 PARTHA SARTHY)

Date : 22-07-2019

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

The petitioner prays for provisional release of the Tempo (three wheeler) bearing Registration No. BR43P-5608, Chassis No. MD2A95AY9HWH56167, Engine No. BBYWHH44745, which has been seized in connection with Araria Police Station Case No.639 of 2018, for the offences punishable under sections 30(a), 36 and 38 of the Bihar Prohibition and Excise Act, 2016.

It is stated by learned counsel for the petitioner that 252.250 litres of India Made Foreign Liquor 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 Tempo and 252.250 litres of India Made Foreign Liquor.

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 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 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 release would, however, be subject to initiation and finalization of 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)

Anjula/SKPathak

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	03-08-2019
Transmission Date	NA

