

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14063 of 2018

Nejamuddin @ Bijli Sai S/o Ash Mohammad R/o vill Jhakiya P.S. Banjariya
Dist.- E. Champaran.

... .. Petitioner/s

Versus

1. The State of Bihar through Principal Secretary, Department of Excise and Prohibition, Govt. of Bihar
2. The District Magistrate, East Champaran at Motihari.
3. The Police Superintendent East Champaran at Motihari.
4. The S.H.O.Turkawalia E. Champaran.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Dhannjay Kumar No 2, Advocate
For the Respondent/s : Mr.Kumar Manish - SC-5

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE JUSTICE SMT. NILU AGRAWAL
ORAL ORDER

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

5 21-01-2019 Heard Mr. Dhannjay Kumar No.2 learned counsel
for the petitioner and Kumar Manish-SC-5 for the State.

The petitioner prays for a direction in the nature of mandamus for commanding the respondents to release his vehicle (Truck) bearing registration No.BR 06GA0958, Chassis No.MAT466417B3G19772, Engine No.B591803111G63161002 which has been seized in connection with Turkawalia P.S.Case No.417 of 2018 registered for alleged violation of Sections 30(a), 38(1) and 41(1) of the Bihar Prohibition & Excise Act, 2016 as well as Sections 372 and 373/34 of the Indian Penal Code.

There is a recovery of 3800 liters of spirit which was kept in 19 plastic drums each having a capacity of 200 liters.

Learned counsel for the petitioner submits that it is on



mere presumption that the seizure has been made. Mr. Kumar Manish informs that confiscation proceeding has already been initiated.

Having heard learned counsel for the parties and considering the nature of seizure, let the vehicle in question be released provisionally in favour of the petitioner, pending initiation/finalization of the confiscation proceeding, the vehicle in question be released provisionally in favour of the petitioner on the petitioner's producing the document of ownership and registration in his name before the 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 Panchnama would be prepared by the 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 Panchnama in course of trial.

The original title deed if deposited shall be kept in safe custody with the court below.

The release shall be allowed within a period of 14 days from the date of submission of the surety along with a Bank Guarantee and the undertakings as stated above. This would, however, be subject to the final order passed in confiscation proceeding.

The writ petition is allowed with the directions above.

(Jyoti Saran, J)

(Nilu Agrawal, J)

B.Kr./-

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