

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2184 of 2019

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Shri Kishsun Kushwaha @ Kishun @ Shri Krishna Kushwaha, S/o Channu Mahto, R/o village - Murgahava Police Station – Dhanaha, District - West Champaran.

... .. Petitioner

Versus

1. The State of Bihar through The Principal Secretary, Excise Department, Government of Bihar, Patna, Bihar
2. The Principal Secretary, Excise Department, Government of Bihar, Patna, Bihar
3. The District Magistrate West Champaran at Bettiah
4. The Superintendent of police, Bagaha, (West Champaran)
5. The District Transport Officer, West champaran at Bettiah
6. The Sub-Divisional Police Officer, West Champaran at Bettiah
7. The S.H.O., Dhaneha, Bagola.

... .. Respondents

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Appearance :

For the Petitioner/s : Mr. Murari Sharan Tiwari, Adv.
For the Respondent/s : Mr. Vivek Prasad, GP 7

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CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN

and

HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 06-02-2019

Perused the office note.

The defect is ignored.

With the consent of the parties the matter is taken up “For Admission”.

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

The petitioner prays for provisional release of the black-red Discover motorcycle bearing registration No. BR-22J-8451, Engine No. JDZREE35693, Chasis No. MD2A14AZ1ERF51480, which has been seized in connection with Dhanaha P.S. Case No. 197 of 2018 for the



offences punishable under sections 30(A) & 37(B) of the Bihar Excise Prohibition Act, 2016.

It is stated by learned counsel for the petitioner that 540 ml of 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 motorcycle and 540 ml of 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 with respect to vehicle in question in his name before the court below with two sureties (one local) to the extent of the value of the vehicle as indicated in the insurance document. The petitioner while submitting the sureties 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 further.

(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 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 submission of the sureties and the undertakings as stated above, which would however be subject to initiation and finalization of the confiscation proceeding, if any.

With the observations above, this writ petition is allowed.

(Jyoti Saran, J)

(Arvind Srivastava, J)

Archana/
Surendra/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	16.02.2019
Transmission Date	NA

