

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.16805 of 2018**

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Kundan Singh @ Kundan Kumar Singh @ Kundan Kumar son of late Sanjay Singh resident of village- Ghuja, P.S. - NTPC Khaira, Nabinagar, District - Aurangabad.

... .. Petitioner/s

Versus

1. The State Of Bihar through the Excise Commissioner, Government of Bihar, Patna.
2. The District Magistrate, Aurangabad, District - Aurangabad.
3. The Superintendent of Police, Aurangabad, District - Aurangabad.
4. The Excise Superintendent, Aurangabad, District - Aurangabad.
5. The Motor Vehicle Inspector, Aurangabad, District - Aurangabad.
6. The Station House Officer, P.S. - NTPC Khaira, District - Aurangabad.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Niraj Kumar, Adv.  
For the Respondent/s : Mr. Anil Kumar Sinha -GA-1

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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 : 11-03-2019**

Heard learned counsel for the petitioner and learned counsel for the State.

This application has been filed seeking provisional release of the Motorcycle in question bearing registration No. BR-26J-9600, which has been seized in connection with Excise Case No. 118 of 2017 arising out of NTPC Khaira P.S. Case No. 09 of 2017 instituted under the provisions of Bihar Prohibition and Excise Act, 2016 (hereinafter referred to as 'the Act').



Apart from prayer for release of the vehicle, the petitioner has also prayed for setting aside the order dated 02.06.2017 passed in Excise Case No.118 of 2017 by the Collector-cum-District Magistrate, Aurangabad by which a direction to confiscate the vehicle in question has been passed by the District Magistrate, Aurangabad being the Confiscation Authority.

Learned counsel for the petitioner informs that final order in the confiscation case has been passed on 22.06.2017 as reflects from the date mentioned below the signature of the District Magistrate, Aurangabad although the order reads the date as 02.06.2017 mentioned at the top of the order. He further submits that he would not be pressing the relief for setting aside the order dated 02.06.2017 passed in Excise Case No.118 of 2017 by the Collector-cum-District Magistrate, Aurangabad for the present but he, however, submits that liberty may be granted to the petitioner to challenge the confiscation order by filing an appeal before the Commissioner within a period of 30 days from today.

Having heard learned counsel for the parties and in the circumstances noted where final orders have been passed in the confiscation proceeding, we are persuaded to grant liberty to the petitioner to challenge the final order of confiscation before the appellate authority within a period of 30 days from today. In case such appeal is preferred within the aforesaid period together with an application for condonation of delay, the appellate authority



shall consider the same keeping in mind that the petitioner was prosecuting his remedy before this Court and the appeal shall be heard on its own merit and disposed of expeditiously.

Learned counsel for the petitioner, at this stage, submits that since the Appellate Authority has no power to pass an interim order of release under 'the Act', he would press this application for provisional release of the vehicle in question.

Learned counsel for the petitioner further informs that 12 litres of country made liquor has been seized and the vehicle in question is lying under open sky in the Police Station and if the release is not allowed, it would turn into a junk. He submits that the State is not going to gain by the vehicle turning junk. Learned counsel for the petitioner further submits that the petitioner is willing to provide such surety and undertakings which may be required to protect the interest of the petitioner as well as the State, during the pendency of the appeal.

Learned counsel for the State is present and submits that in the given facts and circumstances of this case if at all the Court is willing to consider provisional release of the vehicle then interest of the State is required to be protected.

Bearing note of the order of release passed in similar circumstances in C.W.J.C. No. 8513 of 2018 whereby a provisional release has been allowed during the pendency of the appeal subject



to conditions imposed to protect the interest of the State, we take a similar view in the present case as well.

Let the vehicle in question be accordingly released provisionally in favour of the petitioner on the production of the document of ownership and registration in his name before the District Magistrate, Aurangabad (Confiscating Authority) 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 surety bond shall also furnish the following affidavit/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 appeal and shall not alienate the vehicle during this period.

(iii) The petitioner shall furnish an undertaking to produce the vehicle before the Confiscation Authority as and when required.

(iv) Prior to release of the vehicle a Panchnama would be got prepared by the Confiscation Authority 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 undertake 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 along with the undertakings as stated above. This release would, however, be subject to the order passed in appeal.

It is made clear that if the petitioner fails to present an appeal within 30 days as given above, the order of provisional release shall stand withdrawn and the Confiscation Authority shall be at liberty to proceed in accordance with law.

The writ petition is allowed with the directions/observations above.

(Jyoti Saran, J)

( Arvind Srivastava, J)

Brajesh/-

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