

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17009 of 2018

=====

Santosh Kumar alias Santosh Sao, Son of Pitambar Sah, Resident of Village -
Amaithi, P.O. Masona, Police Station - Sahjhauli, District - Rohtas.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Department of Excise,
Government of Bihar, Patna.
2. The District Magistrate, Gaya.
3. The Superintendent of Police, Gaya.
4. The District Excise Officer, Gaya.
5. The S.H.O. Barachatti, Police Station, District Gaya.

... .. Respondent/s

=====

Appearance :

For the Petitioner/s : Mr.Rajani Kant Singh
For the Respondent/s : Mr.Vivek Prasad -Gp7

=====

CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN
and
HONOURABLE MR. JUSTICE ARVIND SRIVASTAVA
ORAL JUDGMENT
(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)

Date : 04-02-2019

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

The writ petition is filed praying for release of
Bolero Maxi Truck bearing Registration No. BR-26K-3026,
Chasis No. MA1ZT2GLKG2D35711, Engine No.
GLG4D62221, which has been seized in connection with
Confiscation Case No. 207 of 2017 arising from Barachatti



P.S. Case No. 309 of 2016 instituted for alleged offence under section 272, 273 of the Indian Penal Code and Section 47A, 48(2) and 63 of the Bihar Prohibition and Excise Act, 2016.

Much prior to the filing of the writ petition before this Court, the confiscation proceeding had been initiated against the petitioner bearing Confiscation Case No. 207 of 2017 and vide order dated 20.04.2018 the vehicle in question has been confiscated.

Seizure of the vehicle is for the alleged recovery of 600 liters of countrymade liquor and 8.60 liters of IMFL. That final order has been passed in the confiscation case, we allow the petitioner to question the same before the Appellate Authority within a period of 30 days from today. In case such an appeal is preferred within the aforesaid period accompanied 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 because the appellate authority has no power to



pass an interim order of release, he would press this application for a provisional release of the vehicle in question.

Learned counsel for the State is not in position to dispute the position because the Act does not allow grant of interim relief by the statutory authority.

Having heard learned counsels for the parties and in the circumstances set-forth above as well as taking of the nature of recovery, 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 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 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. This release would, however, be subject to the order passed in appeal and in case the



petitioner fails to take recourse to the appellate remedy within the time allowed, the release order shall stand recalled with liberty to the Confiscating Authority to proceed in accordance with law.

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

(Jyoti Saran, J)

(Arvind Srivastava, J)

mcv/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	11.02.2019
Transmission Date	N/A

