

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.19243 of 2018

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Rajesh Mahaldar S/o Late Fuday Mahaldar, Resident of Village- Dhattaghat,
P.S.- Jalalgarh, District- Purnea.

... .. Petitioner/s

Versus

1. The State Of Bihar
2. The Excise Commissioner, Bihar, Patna.
3. The Collector, Purnea.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Bijendra Kumar Singh
For the Respondent/s : Mr.Kumar Manish -Sc5

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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 : 08-04-2019

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

This application has been filed seeking provisional
release of the Motorcycle bearing Registration No. BR11AC-6474
seized in connection with Excise Case No. 261 of 2017 arising out
of Jalalgarh P.S. Case No.117 of 2017 under the provisions of the
Bihar Prohibition and Excise Act, 2016.

Apart from a prayer for release of the vehicle the
petitioner has also prayed for quashing of the order dated
12.06.2018 passed by the Collector-cum-District Magistrate,



Purnea in Excise Case No. 261 of 2017 by which a direction to confiscate the vehicle has been passed by the District Magistrate being the Confiscating Authority.

Learned Counsel for the petitioner submits that for the present he would not be pressing the relief for quashing of the order dated 12.06.2018 passed by the Collector-cum-District Magistrate, Purnea in Excise Case No. 261 of 2017. He, however, submits that liberty may be granted to the petitioner to challenge the confiscation order in an appropriate jurisdiction by filing an appeal before the Commissioner within a period of 30 days from today.

In the circumstance noted where final orders have been passed in the confiscation proceedings, we grant liberty to the petitioner to challenge the order of confiscation before the appellate authority within a period of 30 days from today. In case such an 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 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 petitioner submits that 7 litres of Country made liquor has been seized; the vehicle 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 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 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 circumstance in C.W.J.C. No. 8513 of 2018 whereby a provisional release has been allowed during the pendency of 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, Purnea (Confiscating Authority) with two sureties 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 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 appeal 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 confiscating 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.

If the petitioner fails to present an appeal within 30 days as given above, the order of provisional release shall stand withdrawn and the Confiscating Authority shall be at liberty to proceed in accordance with law.

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.

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

(Jyoti Saran, J)

(Arvind Srivastava, J)

sanjeev/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26/04/2019
Transmission Date	NA

