

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.16521 of 2018**

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Rupesh Kumar Son of Late Sachchidanand Yadav, resident of Village- Kanp  
Laxminia Tola, Ward No. 4, P.S. Sour Bazar, District- Saharsa.

... .. Petitioner/s

Versus

1. The State of Bihar through Chief Secretary, Old Secretariat, Bihar, Patna.
2. The Principal Secretary, Excise Department, Govt of Bihar, Patna.
3. The Collector, Saharsa.
4. The District Transport Officer, Saharsa.
5. The Superintendent of Police, Saharsa.
6. The Excise Superintendent, Saharsa.
7. The Station House Officer, Sour Bazar Police Station, District- Saharsa.
8. The Motor Vehicle Inspector, Saharsa.

... .. Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Amarnath Jha  
For the Respondent/s : Mr. Anil Kumar Sinha -GA1

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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 : 28-01-2019**

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 Delux Hero Honda C.D. Motorcycle bearing  
  
Registration No. BR-43A4955 seized in connection with Sour  
  
Bazar P.S. Case No. 501 of 2017 registered under section 30(a)  
  
of the Bihar Prohibition and Excise Act, 2016. It has been  
  
stated that from the vehicle in question 9 liters of illicit liquor  
  
has been recovered.



Apart from a prayer for release of the vehicle, the petitioner has also prayed for setting aside the order dated 18.04.2018 passed by the Collector-cum-District Magistrate, Saharsa in Confiscation (Excise) Case No. 66 of 2017-18 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 setting aside the order dated 18.04.2018 passed by the Collector-cum-District Magistrate, Saharsa in Excise Confiscation Case No. 66 of 2017-2018, 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 Commission within a period of 30 days from today.

In view of the circumstance noted, liberty is granted 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 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 petitioner submits that the vehicle is lying in the open sky in the Police Station and during last one year it is turned almost a junk and if not allowed to release, the State is not going to gain anyway in confiscation proceeding. Learned counsel submits that the petitioner is willing to give such surety and undertakings which may be required to protect the interest of the State during the pendency of the appeal.

Having heard learned counsel for the parties and in the circumstances discussed above, let the vehicle in question be released provisionally in favour of the petitioner on production of documents of ownership and registration with respect to the 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 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 *Panchanama* 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 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 directions/observations above.

**(Jyoti Saran, J)**

**( Arvind Srivastava, J)**

Shailendra/

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