

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Civil Writ Jurisdiction Case No.25038 of 2018**

Kanhaiya Sah @ Kanhaiya Sao S/o Late Bhagwaat Sao. R/o mohalla - Pokharia, Nawav chwok near S.B.I main branch, ward No. 35, P.S Town, District Begusarai

... .. Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate-cum-Collector, District Begusarai
3. The Superintendent of Police, District Begusarai
4. The Sub Divisional Police Officer Begusarai
5. The Sub Divisional Officer Begusarai

... .. Respondent/s

**Appearance :**

For the Petitioner/s : Mr.Sandip Kumar Gautam, Adv.  
For the Respondent/s : Mr.Kumar Manish- Sc5

**CORAM: HONOURABLE MR. JUSTICE JYOTI SARAN**  
**and**  
**HONOURABLE MR. JUSTICE ANJANI KUMAR SHARAN**  
**ORAL JUDGMENT**  
**(Per: HONOURABLE MR. JUSTICE JYOTI SARAN)**

**Date : 29-04-2019**

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

This application has been filed seeking provisional release of the vehicle (Hero Mestro Edge scooter) bearing Registration No. BR09X-1299 seized in connection with Excise Case No. 192-C2 of 2018 registered under Section 30 (a) of the Bihar Prohibition & Excise Act, 2016.

Learned counsel for the petitioner states that from the vehicle in question 720 M.L. of illicit liquor have been recovered. It is submitted that no confiscation proceeding for the vehicle in question is pending.



Learned counsel for the petitioner submits that the vehicle is lying under open sky in the Police Station and if release is not allowed the vehicle is likely to become a junk and in such circumstance, the State is not going to gain anyway in confiscation proceeding. Learned counsel submits that the petitioner is willing to provide such surety and undertakings which may be required to protect the interest of the State during the pendency of the confiscation.

Having heard learned counsel for the parties and in the given facts and circumstances where no confiscation proceeding is presently pending, let the vehicle in question be released provisionally in favour of the petitioner on the petitioner's producing the document of ownership and registration in his name before the designated 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 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 Panchnama 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 along with the undertakings as stated above. This release however, would be subject to the final order passed in confiscation proceeding.

The writ petition is allowed.

**(Jyoti Saran, J)**

Bibhash/-

**( Anjani Kumar Sharan, J)**

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