

**IN THE HIGH COURT OF JUDICATURE AT PATNA
(FROM OFFICIAL CHAMBERS VIA VIDEO APPLICATION)**

Miscellaneous Jurisdiction Case No.1087 of 2020

In

Civil Writ Jurisdiction Case No.5486 of 2018

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Shatrughan Sah S/o Jagdish Sah Resident of Village- Jiwachpur, Ward No-07, P.S.- Madhepura, District- Madhepura.

... .. Petitioner

Versus

1. The State of Bihar through Principal Secretary, Excise Department, Govt. of Bihar, Patna.
2. The Excise Commissioner, Patna.
3. Collector-cum-District Magistrate, Bhagalpur.
4. The Senior Superintendent of Police, Bhagalpur.
5. Superintendent of Excise, Bhagalpur.

... .. Opposite Parties

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Appearance :

For the Petitioner/s : Mr.Deepak Kumar Sinha, Advocate
For the Opposite Party/s : Mr.Vikash Kumar, SC11

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL ORDER

(Per: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD)

3 24-03-2021 This application has been filed seeking modification of the order dated 27.03.2018 passed by Hon'ble Division Bench of this Court in CWJC No. 5486 of 2018.

Earlier, CWJC No. 5486 of 2018 was filed seeking provisional release of the vehicle (Scorpio) bearing No. BHR-11E-6275, chassis No. MA1TA2SJXH2H28202 & Engine No. SJH4H22149 which was seized in connection with Industrial Area P.S. Case No. 20 of 2018 dated 20.02.2018 registered for the offence under Sections 272, 273 of the Indian Penal Code and Section



30/30(a) of Bihar Prohibition and Excise Act.

After hearing learned counsel for the parties, Hon'ble Division Bench of this Court disposed of the said writ application vide judgment and order dated 27.03.2018 in the following terms:

“.....Keeping in view the aforesaid, it is directed that pending finalization of the confiscation proceedings and aforesaid criminal case, the aforesaid vehicle in question shall be released to the petitioner, on his furnishing Bank Guarantee to the satisfaction of District Magistrate, Bhagalpur and further undertaking to produce the vehicle as and when directed by the authority concerned and not to alienate or deal with the vehicle in question or create a third party interest during the pendency of the confiscation proceedings and criminal case or prejudice the right of the State in confiscation proceeding. The aforesaid vehicle shall be released within one week from the date of furnishing of the Bank Guarantee.

With the aforesaid, the writ petition stands allowed and disposed of.”

The present application has been filed with an averment that the vehicle in question has yet not been released because the petitioner has been asked to submit a Bank guarantee of Rs. 10 lakhs. He is not in a position to fulfill the condition imposed by the confiscating authority.

Learned counsel for the petitioner submits that the petitioner is ready to furnish surety bond for the appropriate amount



as per the valuation of the vehicle. Learned counsel further submits that the vehicle is lying under open sky for last 3 years and with every passing day the vehicle is losing its roadworthiness.

It is his submission that if the vehicle is not provisionally released, the entire vehicle will become a junk and by the time the confiscation proceeding is decided, neither the State will be in a position to realise any value of the vehicle nor the petitioner will be benefited in any way. Learned counsel submits that the petitioner would be ready to furnish such undertaking which may be required for purpose of provisional release of the vehicle.

Mr. Vikash Kumar, learned SC-11 appears for the State. Learned counsel has though submitted that the vehicle has not been released because the petitioner was unable to furnish the bank guarantee but he has no answer as to why the confiscation proceeding has remained pending for 3 years. Learned SC-11 has informed this Court that if the petitioner appears before the confiscating authority, the confiscation case shall proceed.

Having heard learned counsel for the petitioner and learned SC-11 for the State, this Court finds that while disposing of the writ application on 27.03.2018, a direction was issued to the confiscating authority to provisionally release the vehicle on his furnishing bank guarantee to the satisfaction of the District Magistrate, Bhagalpur and further undertaking to produce the vehicle as and when directed by the authority concerned and not to alienate



or deal with the vehicle in question.

Pursuant to the said order, the District Magistrate was obliged to get a value of the vehicle done and accordingly petitioner was required to furnish a bank guarantee. It was an interim order of this Court and in case the petitioner was not able to get the provisional release of the vehicle, there was no bar for the District Magistrate, Bhagalpur (O.P. No. 3) in further proceeding with the matter and pass a final order in the confiscation proceeding in accordance with law. Unfortunately, neither the petitioner could get the release of the vehicle by furnishing the bank guarantee nor the confiscation proceeding could be taken to its logical end. The delay in conclusion of confiscation proceeding is fatal for both the State as well as to the individual.

Since we find that the confiscation proceeding is pending for three years, it is deemed just and proper to modify our order dated 27.03.2018.

We direct the District Magistrate, Bhagalpur (O.P. No. 3) to get the valuation of the vehicle done through M.V.I, Bhagalpur and such reports be obtained from M.V.I., Bhagalpur within a period of seven days from the date of receipt/production of a copy of this order. The petitioner shall be obliged to furnish the surety bond to the extent of the value of the vehicle as indicated in the valuation report of the M.V.I., Bhagalpur and on furnishing the surety bond, the vehicle shall be provisionally released in favour of the petitioner.



Upon conclusion of the confiscation proceeding if the petitioner is called upon to deposit the amount as per surety bond, he would do the same. The petitioner would also be obliged to furnish the undertaking to produce the vehicle as and when directed by the authority concerned, not to alienate or deal with the vehicle in question or create a third party interest during the pendency of the confiscation proceeding. The petitioner shall certify the photograph of the vehicle and the same will be placed on the record to be used as a secondary evidence.

This application stands disposed of in terms indicated hereinabove.

(Sanjay Karol, CJ)

(Rajeev Ranjan Prasad, J)

vats/-

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

