

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1268 of 2021

Arising Out of PS. Case No.-30 Year-2020 Thana- KHAGARIA District- Khagaria

PRABHU DAYAL Son of Sri Bansi Lal Resident of Purwa Jagir, Jagahnnoo Udhampur, Jaganoo, Jammu and Kashmir, Pin Code-182121, Special Power of Attorney holder in respect of vehicle of Mohd Iqbal @ Mohd Iqbal Chowdhary, Son of Ch. Gulam Rasool, resident of Plot No.2, Ambedkhar Chowk, Railway Station, Jammu and Kashmir- 180001

... .. Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary, Food and Civil Supplies Dept. Govt. of Bihar. Bihar, Patna
2. The District Magistrate, Khagaria. Bihar
3. The Block Supply Officer, Sadar, Khagaria, District- Khagaria. Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	M/s Ajay Prasad and Kaushal Kumar, Advocates
For the Respondent/s	:	Mr. Md. Kamil Akhtar, AC to AAG 5

CORAM: HONOURABLE MR. JUSTICE PARTHA SARTHY
ORAL ORDER

2 30-11-2021 Heard learned counsel for the petitioner and learned counsel for the State.

The petitioner prays for provisional release of his truck bearing registration no. JK 21 C 4707, chassis no. MB1KADYD8FPSR5412, Engine no. FSPZ141739, Model 2016 which has been seized in connection with Khagaria P.S. Case no. 30 of 2020 registered under section 188 of the Indian Penal Code and section 7 of the Essential Commodities Act, 1955.



It is submitted by learned counsel for the petitioner that the respondent authorities seized the truck and rice loaded on the said truck on the basis of suspicion. The arwa rice being a free sale item, it is neither taxable nor a controlled item and thus the petitioner has not violated any of the terms of the Essential Commodities Act. The vehicle in question is lying in the open sky. The petitioner undertakes that as and when the vehicle would be required, he shall produce the same before the authorities concerned. Further referring to the order dated 8.7.2021 passed by learned SDJM, Khagaria, learned counsel for the petitioner submits that a confiscation proceeding being Case no. 4 of 2020-2021 has been initiated, however the petition filed for release of the vehicle was rejected vide order dated 8.7.2021. The petitioner prays that the vehicle be released provisionally.

The application is opposed by learned counsel appearing for the State. Learned counsel for the State submits that the instant application having been filed by a holder of a special power of attorney on behalf of the owner of the vehicle, no order for release be passed in his favour.

Having heard learned counsel for the parties and taking note of the nature of the seizure made as well as the fact



that the confiscation proceeding is pending, it is directed that the the vehicle in question shall be released provisionally in favour of owner of vehicle in question, namely, Md. Mohd Iqbal @ Mohd Iqbal Chowdhary son of Ch. Gulam Rasool who will be at liberty to move an application for release in the confiscation proceeding. It is directed that in case an application is moved by the owner of the vehicle, the vehicle in question shall be released provisionally in favour of the owner on production of ownership and registration documents with respect to the vehicle in question in his name before the District Magistrate, Khagaria along 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 owner while submitting the surety and 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 owner of the vehicle 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 owner of the vehicle 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 District Magistrate, Nawada wherein the photograph of the vehicle shall be taken and will be certified by the owner of the vehicle and the same shall be kept on record so that in future if so required, it may be used as a secondary evidence. The owner of the vehicle 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 one surety along with a Bank Guarantee or the original title deed of immovable property situated in the district, as the case may be, to the extent of the value of the vehicle as indicated in the insurance document and the undertakings, as stated above. This release would, however, be subject to finalization of the confiscation proceeding. The title deed papers shall remain in safe custody of the confiscating authority subject to final decision in the



confiscation proceedings.

The writ application is allowed.

(Partha Sarthy, J)

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