
(2019) 07 PAT CK 0090

Patna High Court

Case No: Civil Writ Jurisdiction Case No. 8050 Of 2019

Deepak Kumar

APPELLANT

Vs

State Of Bihar Through
And Ors

RESPONDENT

Date of Decision: July 8, 2019

Hon'ble Judges: Jyoti Saran, J; Partha Sarthy, J

Bench: Division Bench

Advocate: Alok Kumar Alok, Vikash Kumar

Final Decision: Allowed

Judgement

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

This application has been filed seeking provisional release of the Hero Passion Pro Motorcycle bearing registration No. BR-30Q-7518, Chasis No.

MBLHA10BSGHJ52966, Engine No. HA10EVGHJ55758 seized in connection with Confiscation Case No. 466/2017 arising out of Case No.

C2/456/2017 under the provisions of the Bihar Prohibition and Excise Act, 2016.

Learned counsel for the petitioner submits that instead of releasing the motorcycle the District Magistrate, Sitamarhi being the confiscating authority

has passed an order on 8.12.2017 in Confiscation Case No. 466/2017 for confiscation of the vehicle in question. He further submits that the vehicle

has not been auctioned.

Learned Counsel for the petitioner, 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 64.500 liter of Nepali liquor has been seized; the vehicle is lying under open sky in the Police Station

during last two year 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.

Accordingly, we direct that the vehicle in question be released provisionally in favour of the petitioner, if not already auctioned, on production of

ownership and registration papers with respect to vehicle in question before the District Magistrate, Sitamarhi (Confiscating Authority) with one surety

alongwith 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 petitioner while submitting the surety and the 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 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 designated 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.

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 production of ownership/registration papers supporting the claim of the

petitioner together with one surety alongwith the Bank Guarantee or title deed of immovable property situated in the district, to the extent of the value

of the vehicle as indicated in the insurance document and the undertaking, as stated above. The title deed papers shall remain in safe custody of the

confiscating authority. The release shall be subject to the outcome of the order in appeal.

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