

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 7168 of 2015

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Munna Singh son of Krishna Singh Resident of village Kanchanpur, P.S. Sasaram (M), District - Rohtas.

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Forest Department, Government of Bihar, Patna.
2. The District Magistrate, Rohtas at Sasaram.
3. The Divisional Forest Officer-cum-Authorised Officer, Rohtas Division, Sasaram, District - Rohtas.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Rajani Kant Singh

For the Respondent/s : AC to GA-4

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

3. 11-09-2015 On call, a prayer is being made by learned A.C. to Govt. Advocate – 4 for granting further time for filing counter affidavit. He submits that he has received a communication for requesting the Court to grant further time for filing counter affidavit. Earlier on 13-08-2015, on the prayer made by learned counsel for the State, four weeks' time was granted for obtaining instruction and filing counter affidavit. On the last date, orally it was made clear that no further adjournment shall be granted, even then, without filing counter affidavit, again same prayer is being reiterated. Accordingly, the prayer for adjournment stands refused.

The petitioner, invoking writ jurisdiction of this Court



under Article 226 of the Constitution of India, has prayed for directing for provisional release of his truck, bearing registration no. BR06GA/3439 (hereinafter referred to as the 'vehicle in question') in connection with Confiscation Case No. 83 of 2015 (arising out of Forest Case No. 41 of 2015) registered under Sections 33, 41 and 42 of the Indian Forest Act, 1927 (hereinafter referred to as the 'Forest Act').

Sri Rajni Kant Singh, learned counsel for the petitioner submits that his truck was seized on 29-04-2015 on NH-2 near Mohan Bigha bridge, Dehri-on-Sone. At the time, when truck was intercepted, the truck was loaded with stone chips measuring about 500 C.F.T. A further plea has been taken that the said stone chips were being carried on appropriate challan. The chips were loaded from the crusher machine of licensee namely Sri Nandlal Gupta, M/s Sona Stone Chips, Chhatarpur, Palamu (Jharkhand) and same was being carried to Sasaram. Despite the fact that challan was produced, it was unauthorisedly seized. It has been argued that even for the time being, if it is assumed that any offence was committed, in any event, there was no application of Forest Act, which has been alleged to be committed in the F.I.R. i.e. offence under Sections 33, 41 and 42 of the Forest Act. He submits that the truck was loaded with stone chips, which is not a



forest article. In any event, he submits that though, it was illegal seizure, confiscation proceeding was initiated and on notice, immediately thereafter the petitioner appeared before the confiscation authority i.e. Divisional Forest Officer and filed show cause, vide **Annexure – 3** to the writ petition. Besides filing show cause, the petitioner has also prayed for provisional release of the vehicle in question by way of filing an application in Confiscation Case No. 83 of 2015 (arising out of Forest Case No. 41 of 2015) on 02-05-2015 (**Annexure –4** to the writ petition). He further submits that despite filing of the petition for provisional release, the Forest officials have not taken any step for release of the vehicle in question. He submits that the vehicle in question is lying in open sky and there is every possibility of decay of the same. The petitioner undertakes that he is ready to furnish appropriate bond and sureties. He has also relied on an order passed by this Court on 16-02-2015 in C.W.J.C. No. 377 of 2015, which was disposed of alongwith other writ petitions. In the said case also, direction for provisional release has been granted.

Keeping in view the fact that by allowing a vehicle in question to remain in open sky may not serve any purpose, save & except, allowing the vehicle to be destroyed, the Court is of the opinion that in view of facts and circumstances, direction can be

issued for provisional release of the vehicle in question in favour of the petitioner on fulfillment of the following conditions:-

- (a) The petitioner shall produce all original papers supporting the ownership of the vehicle in question including the registration papers, the insurance paper, the tax token and the pollution certificate.
- (b) The petitioner shall file an undertaking in the form of an affidavit that he shall not alienate the vehicle or transfer the vehicle in favour of any third party during the pendency of the confiscation proceedings and shall produce the vehicle as and when required in the confiscation proceedings
- (c) The petitioner shall furnish such security as deem fit and proper by the Divisional Forest Officer-cum-Authorized Officer, Rohtas at Sasaram, which shall neither be in the form of cash nor bank guarantee; and
- (d) The release of the vehicle shall be governed by the final outcome of the confiscation proceedings.

All the formalities must be completed within four weeks from the date of receipt/production of a copy of this order.

The writ petition stands allowed.

(Rakesh Kumar, J.)

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