

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.14712 of 2015

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Jai Ram Kumar @ Pappu Gupta, S/o- Gopal Saw, R/o Village- Amratalab,
P.S.- Sasaram (M), District- Rohtas.

.... Petitioner

Versus

1. The State of Bihar through Principal Secretary, Forest Department, Government of Bihar, Patna.
2. The Chief Conservator of Forest Bihar, Patna.
3. The District Magistrate, Rohtas, Sasaram.
4. The Authorized Officer –cum- Divisional Forest Officer, Rohtas, Sasaram.
5. The District Forest Officer, Rohtas, Sasaram.
6. The Range Officer Sasaram Forest Ara at Sasaram.
7. The Forestor Tilauthu –cum- Darigaon, Forest Circle District- Rohtas.

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Uma Shankar Singh

For the Respondent/s : Mr. AC to AAG-4

CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR

ORAL ORDER

3 30-10-2015 Today again, a prayer is being made by learned AC to AAG-4 for adjourning the case for filing counter affidavit. On 16.09.2015, while granting time on the prayer made by learned counsel for the State for filing counter affidavit, it was indicated that if within specified time no counter affidavit was filed, on the next date in absence of counter affidavit the, Court may propose to decide the case on the basis of the materials available on record. Accordingly, the prayer for adjournment stands refused.

Heard Sri Uma Shankar Singh, learned counsel for the petitioner and learned AC to AAG-4.

The petitioner, invoking writ jurisdiction of this Court



under Article 226 of the Constitution of India, has approached this Court with a prayer to direct the Respondents to provisionally release his truck bearing Registration No.JH-02M/9639 pending confiscation proceeding i.e. Confiscation Case no.106/2013. Learned counsel for the petitioner submits that his truck was illegally seized by the Respondent on 28.10.2013. His truck loaded with stone chips with valid permit, which was being carried from Palamu(Jharkhand) to Ara, was illegally seized along with stone chips. Besides initiating criminal prosecution, the Respondents also initiated confiscation proceeding for confiscating the vehicle in question vide confiscation case no.106 of 2013. It has been argued that in the confiscation proceeding, though the petitioner was intending to produce evidences, in haste the confiscating authority i.e. Authorised Officer-cum- Divisional Forest Officer, Rohtas, Sasaram passed the confiscation order. The said order was assailed by the petitioner before the appellate authority i.e. the Collector, Rohtas, Sasaram vide Forest Confiscation Appeal no.28/2014. Since the vehicle was not being properly cared, the petitioner , in the meanwhile, approached this Court by filing a writ petition vide C.W.J.C. No.29 of 2015 with a prayer to direct the appellate authority for expeditious disposal of the appeal. The



petitioner also prayed for provisional release of the vehicle pending adjudication of the appeal. The said writ petition was disposed of on 04.02.2015 with an observation that the appeal may be disposed of within specified time. Accordingly, vide order dated 23.07.2015 the learned Collector after setting aside the order of confiscation remitted back the matter to the Forest Officer-cum- Divisional Forest Officer for deciding the confiscation case after affording full opportunity to the parties. During pendency of confiscation after remand, the petitioner again filed a petition for provisional release of the vehicle in question. Since no order was passed, the petitioner has approached this Court by filing the present writ petition.

In this case on 16.09.2015 keeping in view the fact that the vehicle in question was seized in the year 2013, this Court, while granting time to learned State Counsel, had made it clear that if no counter affidavit is filed within the extended time, the Court may propose to decide the case on the basis of materials available on record. Till date no counter affidavit has been filed. Accordingly, the prayer for adjourning the case stood rejected.

I have heard the parties and perused the material available on record. On examining the material available on record, the Court is satisfied that if the seized vehicle is allowed



further to be kept in the custody of the Respondents, there is every likelihood that the vehicle may be destroyed. At least once the order of the confiscation was set aside by the appellate authority and, thereafter, the matter was remitted back to the confiscating authority i.e. Divisional Forest Officer, the prayer for provisional release was required to be considered by the Divisional Forest Officer.

In view of facts and circumstances, particularly the fact that the petitioner has filed the application for provisional release of the vehicle in question before the Divisional Forest Officer in Confiscation Case no.106 of 2013 and also the fact that Respondents have preferred not to controvert the averment made in the writ petition by filing any counter affidavit, the writ petition can be allowed. Accordingly, the writ petition is allowed with a direction to the authority concern to immediately release the vehicle in question in favour of the petitioner on 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- Authorised Officer, Rohtas at Sasaram which shall neither be in the form of cash nor bank guarantee.
- (d) The release of the vehicle shall be governed by the final outcome of the confiscation proceedings.

This order must be complied with without unnecessary delay.

(Rakesh Kumar, J)

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