

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No. 7930 of 2015

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Radhe Shyam Sah son of Kalbu Sah, Resident of Village – Rampur, P.S. – Sasaram (M), District – Rohtas.

.... Petitioner

Versus

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

.... Respondents

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Appearance :

For the Petitioner : Mr. Rajani Kant Singh

For the Respondents : AC to GP-15

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CORAM: HONOURABLE MR. JUSTICE RAKESH KUMAR
ORAL ORDER

4. 21-09-2015

Heard Sri Rajani Kant Singh, learned counsel for the petitioner and learned A.C. to Govt. Pleader – 15.

The petitioner, who is owner of a truck, bearing registration no. JH09H/9271 (hereinafter referred to as the ‘vehicle in question’), has approached this Court invoking its writ jurisdiction under Article 226 of the Constitution of India, with a prayer to direct the respondents to provisionally release the vehicle in question in Confiscation Case No. 55 of 2013 (arising out of Akorhigola P.S. Case No. 34 of 2013).

It was submitted by learned counsel for the petitioner that the vehicle in question was seized by the local police on an allegation of commission of forest offences. It was alleged that truck was illegally carrying stone chips measuring about 250



C.F.T. It was submitted that seizure was itself illegal, however; subsequently besides lodging F.I.R., a confiscation proceeding was initiated, vide Confiscation Case No. 55 of 2013. Earlier, without any notice or giving any opportunity to the petitioner, the Divisional Forest Officer-cum-Authorised Officer, Rohtas Division, Sasaram had passed an order confiscating the vehicle in question. Against the said order, the petitioner preferred an appeal, vide Confiscation Appeal No. 50 of 2014. The appellate authority i.e. Collector, Rohtas at Sasaram allowed the appeal and remitted back the matter to the Divisional Forest Officer. After the matter was remitted back, the petitioner, besides filing show-cause, also filed a petition for provisional release of the vehicle in question on 09-05-2015. It has been argued that despite filing of the petition for release of the vehicle, neither any order has been passed on provisional release nor confiscating proceeding has been concluded.

Learned counsel for the petitioner submits that the vehicle in question is source for livelihood of the petitioner, which has been kept in open sky after the seizure, which was effected on 12-03-2013 and there is every possibility of decay of the same. Learned counsel for the petitioner has also placed reliance on an order passed by a coordinate Bench of this Court on 16-02-2015 in

C.W.J.C. No. 377 of 2015 & other connected writ petitions. He submits that almost in similar circumstances, this Court has directed for provisional release of the vehicle in question. Hence, it has been prayed for provisionally release of the vehicle in question.

Learned State counsel has opposed the prayer of the petitioner and has referred to the facts disclosed in the counter affidavit. He submits that at the time of seizure by the police, no document was produced and as such, it was seized by the local police and after intimation to the concerned Magistrate, the matter was reported to the Forest officials and thereafter, under the Forest Act, the confiscation proceeding was initiated and same is still pending after the matter was remitted back by the appellate authority.

Besides hearing learned counsel for the parties, I have also perused the materials available on record. Keeping in view the submission made by learned counsel for the petitioner that the vehicle in question is lying in open sky, the Court considers that allowing the vehicle to be destroyed may not serve any purpose to either party. Moreover, the confiscation order was earlier set aside by the appellate authority and the matter was remitted back to the competent authority i.e. Divisional Forest



Officer. Before the Divisional Forest Officer, the petitioner, besides filing show cause, has also filed a petition in the month of May, 2015 for release of the vehicle, however; till date neither confiscation proceeding has been concluded after the case was remitted back nor any order has been passed on the petition for release.

Accordingly, in terms of order dated 16-02-2015 passed in C.W.J.C. No. 377 of 2015 & other connected writ petitions, the Court is of the considered opinion that allowing the vehicle to be destroyed may not serve any purpose and as such; direction can be issued for provisional release of the vehicle in question in favour of 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 three weeks from the date of receipt/production of a copy of this order. Since, the order has been passed in presence of learned State counsel, the Court expects that learned State counsel may communicate the direction of this Court to the concerned authority forthwith.

The writ petition stands allowed.

(Rakesh Kumar, J.)

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