

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.14689 of 2016

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Dinesh Singh S/o Deba Singh Resident of -Naga Road, PO+PS Raxual, East
Champanan

.... Petitioner/s

Versus

1. The Union of India through Commissioner of Customs, (Preventive), Fifth Floor, C.R. Building, B.C.Patel Marg, Patna-800001
2. The Deputy Commissioner, of Customs (Preventive), Division- Custom (P)-Motihari
3. The Superintending of Customs (Preventive), Division-Custom (P)-Motihari

.... Respondent/s

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Appearance :

For the Petitioner/s : Mrs. Nivedita Nirvikar, Advocate.
Mr. Rajeev Ranjan, Advocate.
Mr. Vikash Kumar, Advocate.

For the Union of India : Mr. Satya PrakashTripathy, Sr. Sc
Mr. Satya Vrat, Advocate.

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CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE DR. JUSTICE RAVI RANJAN

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date: 18-10-2016

By means of this writ application made under Article 226 of the Constitution, the petitioner, who is proprietor of New Jai Bajrang Bali Transport Corporation, seeks appropriate writ(s) directing the respondent Nos. 2 and 3, namely, the Deputy Commissioner of Customs (Preventive), Motihari Division, and the Superintendent of Customs (Preventive), Motihari Division, respectively, to release his truck, bearing registration No. PB-12-J/8749, which had been seized on 29.07.2016, along with 'Ginger' by the respondents aforesaid. The petitioner also seeks release of the seized 'Ginger'.

Heard Ms. Nivedita Nirvikar, learned counsel appearing on behalf of the petitioner, and Mr. Satya Prakash Tripathy, learned counsel for the Union of India.

Mr. Satya Prakash Tripathy, learned counsel appearing on behalf of the respondents, submits that seized '*Ginger*', being perishable item, has already been auctioned and the sale proceeds have been deposited in the appropriate account.

As far as the truck, in question, is concerned, the same is, admittedly, in the custody of the respondents.

To a query made by this Court, Mr. Tripathy, learned counsel for the Union of India, could not submit if any confiscation proceeding has been started against the petitioner's truck. This apart, it is the grievance of the petitioner, as per Ms. Nivedita Nirvikar, that the petitioner has, now, been summoned to give his statement before the respondents or the authorities concerned without serving copy of the seizure list.

Though it is the duty of the custom officials to maintain the vehicle in the same condition in which it was seized so that the vehicle, in question, can be returned to the person entitled thereto if the confiscation proceeding fails.

Logically extended, it will mean that there is no legal impediment in *provisionally* releasing a vehicle involved in the commission of an offence, pending adjudication of a confiscation

proceeding, provided that the authorized officer or the Court, as the case may be, is reasonably assured that the vehicle shall be produced by the custodian as and when ordered or required if such situation arises.

Situated thus, what crystallizes from the above discussion is that there is no bar for the vehicle to be released in interim custody of the petitioner if confiscation proceeding is pending. The power, however, to release the vehicle, in question, *provisionally*, can be exercised only by the Custom Officer.

In the case at hand, since there is nothing on record to show that the vehicle, in question, will not be produced by the petitioner-appellant during the confiscation proceeding or as and when, otherwise, required, this Court is of the view that it would have been appropriate to direct *provisional* release of the truck in favour of the petitioner-appellant pending finalization of the confiscation proceeding.

In the result and for the foregoing reasons, this writ petition is allowed and we, in the interest of justice, direct the respondents No. 2 and 3, namely, the Deputy Commissioner of Customs (Preventive), Motihari Division, and the Superintendent of Customs (Preventive), Motihari Division, respectively, to release, *provisionally*, the vehicle, in question, in favour of the appellant, subject to the following conditions.

- (i) The petitioner shall furnish all the necessary papers/documents of ownership and security as may be deemed fit and proper by respondent Nos. 2 and 3.
- (ii) The petitioner shall undertake, in writing, that the vehicle, in question, shall neither be alienated nor be transferred in favour of any third party during the pendency of the confiscation proceeding and that the vehicle, in question, shall be produced as and when called upon or required in the confiscation proceeding or otherwise.

With the observations and directions, this application stands disposed of.

(I. A. Ansari, CJ)

(Dr. Ravi Ranjan, J)

Prakash/-

AFR/NAFR	
CAV DATE	
Uploading Date	21.10.2016
Transmission Date	