

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No. 1017 of 2017

Arising out of P.S. Case No. - null Year - null Thana - null District - BHABHUA (KAIMUR)

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Md. Kayum Ansari, Son of Late Isha Ansari, R/o Village Bharari Khurd, P.S. Chand, District Kaimur at Bhabua

.... Petitioner

Versus

1. The State of Bihar through the Commissioner, Excise Deptt., Bihar, Patna
2. Collector-cum-District Magistrate, Kaimur at Bhabua
3. The Superintendent of Police, Kaimur at Bhabua
4. The Officer-in-Charge of Chand Police Station Kaimur at Bhabua

.... Respondents

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Appearance :

For the Petitioner : Mr.

For the Respondents : Mr.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 17-07-2017

The petitioner claims to be owner of Honda Livo bearing engine no. JC71ET0229276 which was seized in connection with Chainpur P.S. Case No. 74 of 2017 registered for alleged violation of Section 30(a) of the Bihar Prohibition and Excise Act, 2016. The vehicle was confiscated by the Collector, Kaimur at Bhabua in Confiscation Case No. 180/2016-17 by order dated 11.05.2017.

The aforesaid order of confiscation has been challenged in this writ application under Articles 226 and 227 of the Constitution of India.

Submission of the learned counsel for the petitioner is that the issue whether the Executive Authority can exercise power of a judicial authority to confiscate the vehicle is under sub-judice before a



Larger Bench of this Court in L.P.A. No. 1647 of 2015 (**Baleshwar Roy vs. The State of Bihar & Ors.**). Hence, till disposal of the L.P.A. aforesaid, further proceeding in pursuance of the impugned order be stayed and the vehicle be released as ad interim custody in favour of the petitioner as no purpose is going to be served by its continued detention.

Learned counsel for the State-respondent submits that there is provision of appeal under Section 92(2) of the Bihar Prohibition and Excise Act, 2016 against the impugned order before the Commissioner, hence, the petitioner has got statutory remedy to ventilate his grievance.

Since the jurisdiction of the authority concerned (Executive Authority) to confiscate the vehicle is sub-judice before this Court, there is no reason to not grant the interim relief to the petitioner till adjudication of the aforesaid issue.

Hence, it is ordered that the operation of the impugned order shall remain stayed and shall be subject to the result of the L.P.A. aforesaid.

Let the referred vehicle be released in favour of the petitioner by way of ad interim custody on execution of surety bond (not in the form of bank guarantee) of Rs.50,000/- (rupees fifty thousand) along with two sureties of the like amount with condition



that the petitioner shall not dispose of the same without permission of the Court and shall produce as and when required.

Accordingly, this application stands disposed of.

(Birendra Kumar, J)

Kundan/-

AFR/NAFR	N.A.
CAV DATE	N.A.
Uploading Date	18.07.2017
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