

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1746 of 2017

Arising Out of PS.Case No. -null Year- null Thana -null District- BANKA

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1. Subhash Kumar Son of Ram Narayan Prasad Sinha, R/o Savitri Bhawan, Hatia Road, Tilkamanjhi, P.S.- Tilkamanjhi, District and Town- Bhagalpur.

.... Petitioner/s

Versus

1. The State of Bihar Through Principal Secretary, Department of Excise, Government of Bihar, Patna.
2. The District Magistrate Banka,
3. The Superintendent of Police, Banka.
4. The Officer in Charge Panjwara P.S., District- Banka.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rashid Izhar, Advocate

For the Respondent/s : Mr. Vivek Prasad, GP-7

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 10-10-2017

Heard learned counsel for the parties.

2. The Bolero of this petitioner bearing registration No.BR-10PA/2403 was seized in connection with Panjwara P.S. Case No.46 of 2017 for alleged violation of the Excise law.

3. The petitioner moved the learned Additional Sessions Judge-II, Banka, for release of the vehicle and the prayer was refused on 29.08.2017 mainly for the reason that Section 60 of the Bihar Prohibition and Excise Act, 2016, bars jurisdiction of the Court to entertain release of the seized articles.

4. Learned counsel for the petitioner submits that no purpose is going to be served by continued detention of the seized vehicle. He further submits that the power of the Executive Authority to confiscate the vehicle is under challenge in **LPA No.1647 of 2015 Baleshwar Roy V. The State of Bihar & Ors.** before a larger Bench of this Court on the ground that such power is



exercisable only by a judicial authority. Hence, till disposal of the L.P.A. aforesaid the interim custody may be ordered in favour of the petitioner.

5. The learned counsel for the State-respondent has opposed the prayer. However, does not dispute the aforesaid factual position of the pending issue in the L.P.A. aforesaid.

6. Finding substance in the submission of the learned counsel for the petitioner especially the fact that no purpose would be served by continued detention of the said vehicle, let referred vehicle be released in favour of the petitioner by way of ad interim custody on execution of surety bond of Rs.7,00,000/- (Seven Lacs), not in the form of cash/Bank Guarantee, along with two sureties of the like amount each to the satisfaction of the concerned authority with condition that the petitioner would not dispose of the said vehicle without permission of the authority concerned and shall produce as and when required by the Court. This order shall be subject to the result of the L.P.A. aforesaid.

7. With the aforesaid observation, this writ application stands disposed of.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
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