

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1242 of 2017

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

- =====
1. Sanjeev Kumar Jha @ Sanjay Kumar Jha aged about 45 Years, Son of Shri Ram Padarath Jha, R/o Village- Panchbir- Hajipur, Wared No. 2, P.S.- Sahebpur Kamal, District- Begusarai.

.... Petitioner/s

Versus

1. The State of Bihar Through The Principal Secretary, Department of Excise And Prohibition, Government of Bihar, Patna.
2. The District Magistrate , Begusarai,
3. The Superintendent of Police, Begusarai,
4. The Office-In-Charge of Sahebpur Kamal, P.S., District- Begusarai.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ranjit Jha, Advocate

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

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 12-09-2017

Heard learned counsel for the parties.

2. The petitioner is owner of Bolero bearing registration No. BR09M-8170. The said vehicle was seized in connection with Sahebpur Kamal P.S. Case No.11 of 2017, a case registered for alleged violation of the Excise laws.

3. The present writ application has been filed for direction to the respondents to release the said vehicle.

4. Submission of the learned counsel for the petitioner is that the petitioner had approached the learned Additional Chief Judicial Magistrate, Begusarai, for release of the vehicle. By order



dated 25.01.2017, the Additional Chief Judicial Magistrate, Begusarai, refused the prayer of the petitioner. Thereafter petitioner moved to learned Additional Sessions Judge-cum-Special Judge, Begusarai, for release of the vehicle but till date learned Special Judge has not passed any order in this regard.

5. Contention of the learned counsel for the petitioner is that the power of the executive authority to confiscate the vehicle is pending consideration in **LPA No.1647 of 2015 (Baleshwar Roy V. The State of Bihar & Ors.)** before a larger Bench of this Court. Hence, till adjudication of that dispute the interim release of the vehicle may be ordered in favour of the petitioner otherwise the vehicle would get rotten in the police lockup.

6. Learned counsel for the respondent submits that Section 60 of the Bihar Prohibition and Excise Act, 2016, bars the jurisdiction of the Court to entertain application for release of the seized articles including the vehicles. Hence, the prayer before the Court-below is apparently not entertainable which had in fact not been entertained by the Court-below.

7. In the circumstances, for substantial justice, let the vehicle, in question, be released in favour of the petitioner by way of ad interim custody on execution of surety bond of Rs.8,00,000/- (Eight 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. With further condition that petitioner shall not authorize the use of the vehicle to any other person nor the same use on hire as specific claim of the petitioner is that he has unaware of the fact that what was being carried in the said vehicle. The release shall be subject to the result of the L.P.A. aforesaid.

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

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.09.2017
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