

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No. 2277 of 2017

Arising Out of PS.Case No. -null Year- null Thana -null District- NALANDA (BIHARSHARIFF)

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Dharambir Malakar @ Viru Malakar, Son of Late Shrawan Malakar, Resident of
Mohalla Hajipur, P.S. – Bihar, District Nalanda

.... Petitioner

Versus

1. The State of Bihar, through the Principal Secretary, Prohibition And Excise
Department, Govt. of Bihar, Patna
2. The District Magistrate, Nalanda
3. Superintendent of Police, Nalanda
4. The Officer-in-Charge, Sare Police Station, Nalanda

.... Respondents

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Appearance :

For the Petitioner : Mr. Mukesh Kumar, Advocate

For the Respondents : Mr. Vevek Prasad, G.P. VII

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 15-11-2017

Heard learned counsels for the parties.

The petitioner claims to be owner of Scooty bearing
registration no. BR-21Q-7940 and mobile bearing IMEI No.
35714708072660 and 357148081072668 which were seized in connection
with Sare P.S. Case No. 121 of 2017 for alleged violation of the Excise
Laws.

By the impugned order dated 06.10.2017, the learned 6th
Additional Sessions Judge-cum-Special Judge (Excise), Nalanda, Bihar
Sharif refused to release the vehicle in favour of the petitioner for the
reason that Section 60 of the Bihar Prohibition and Excise Act, 2016 bars
jurisdiction of the court in such matter.

The aforesaid order is under challenge in this criminal writ
petition.



The State-respondents have challenged the prayer on the ground that the order of the court below is consistent with the law applicable, hence, requires no interference.

Considering the fact that power of the Executive Authority to confiscate and auction the seized articles, which is exercisable by a judicial authority, is under challenge before a Larger Bench in L.P.A. No. 1647 of 2015 (**Baleshwar Roy vs. The State of Bihar & Ors.**) as well as considering the fact that different Division Benches of this Court have ordered interim release of the seized vehicle in favour of the owner of the vehicle, let the vehicle in question be released in favour of the petitioner on execution of surety bond of Rs.30,000/- (rupees thirty thousand) (not in the form of bank guarantee or cash) along with two sureties of the like amount each, with condition that the petitioner shall not dispose of the same without permission of the Court and shall produce the vehicle as and when required by the court.

The release shall be subject to the final result of the pending L.P.A. aforesaid.

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

(Birendra Kumar, J)

Kundan/-

AFR/NAFR	N.A.
CAV DATE	N.A.
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