

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Writ Jurisdiction Case No.1404 of 2017**

Arising Out of PS.Case No. -null Year- null Thana -null District- SASARAM (ROHTAS)

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1. Md. Arman Son of Abdul Lais, R/o Village- Koath, P.S.- Dawath , District- Rohtas.

.... .... Petitioner/s

Versus

1. The State of Bihar Through The Principal Secretary, Department of Registration, Excise And Prohibition, Government of Bihar, Patna.
2. The Excise Commissioner, Bihar, Patna.
3. The Collector Cum the District- Magistrate, Rohtas.
4. Officer In Charge, Dawath, Rohtas.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Mr. Ram Prawesh Kumar, Advocate

For the Respondent/s : Mr. Kumar Ravish, Advocate

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**CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR**

**ORAL JUDGMENT**

**Date: 09-10-2017**

Heard learned counsel for the parties.

2. The Bolero vehicle of this petitioner bearing registration No.BR-45P/1831 was seized in connection with Dawath P.S. Case No.34 of 2017 for alleged violation of the Excise law.

3. Commercial quantity of liquor which is prohibited in the State of Bihar was recovered from the vehicle of the petitioner bearing registration No. BR-45P/1831.

4. The petitioner moved the learned Sub-Divisional Judicial Magistrate, Bikramganj, for release of the vehicle. The learned Sub-Divisional Judicial Magistrate, Bikramganj, called for a



report but till date no report has been received. Thereafter, the petitioner moved the learned Additional Sessions Judge II-cum-Special Judge, Bikramganj, Rohtas, for release of the vehicle. He also called for a report but till date no order has been passed 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.

5. 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.

6. 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.

7. A division Bench of this Court while releasing the vehicle in favour of the petitioner in CWJC No.13670 of 2017 (Subhash Thakur V. The State of Bihar & Ors.) ordered for release



of the vehicle on furnishing bank guarantee equivalent to the value of the vehicle.

8. 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 the bank guarantee of Rs.5,00,000/- (Five Lacs) to the satisfaction of the Sub-Divisional Judicial Magistrate, Bikramganj, Rohtas, 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.

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

**(Birendra Kumar, J)**

Mkr./-

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