

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No. 1257 of 2016

Arising out of P.S. Case No. - null Year - null Thana - null District – VAISHALI (HAJIPUR)

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Akash Kumar, S/o Late Parmeshwar Prasad, Resident of Mohalla - Dasratha, P.S.
Beur, Distt. Patna

.... Petitioner

Versus

1. The State of Bihar through the District Magistrate, Vaishali at Hajipur
2. The District Supply Officer, Vaishali at Hajipur
3. The Block Supply Officer, Vaishali at Hajipur
4. The SHO, Vaishali P.S. District - Vaishali

.... Respondents

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Appearance :

For the Petitioner : Mr. Kumari Rashmi, Advocate

For the Respondents : Mr. Arvind Ujjwal, S.C. IV

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 19-07-2017

Heard learned counsels for the parties.

2. The petitioner has invoked the writ jurisdiction of this Court for issuance of mandamus directing the respondents to release Bolero Pickup Van bearing registration no. BR-01GE/0463 which was seized in connection with Vaishali P.S. Case No. 86 of 2016, a case registered under Section 420 of the Indian Penal Code and Section 7 of the Excise Act.

3. Initially, it was argued that for release of the vehicle, the application is pending before the learned Chief Judicial Magistrate, Vaishali.

4. Thereafter by order dated 08.03.2017 an explanation was called for from the learned court below regarding reason for pendency.



5. The court below has explained that due to laches on the part of the Clerk dealing with the file, the order could not be complied earlier.

6. There is no reason to accept the explanation for the reason that due to failure on the part of the system to discharge duty the litigant should not be allowed to suffer. The Chief Judicial Magistrate is directed to recommend necessary action against the erring staff. The report further reveals that later on a report was received from the District Magistrate, Vaishali that a confiscation proceeding is going on for confiscation of the seized Bolero Pickup Van, hence, the learned Chief Judicial Magistrate refused the prayer for release.

7. 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.

8. 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.

9. 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.

10. 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.

11. 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.8,00,000/- (rupees eight lakhs) 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.

12. Accordingly, this application stands disposed of.

(Birendra Kumar, J)

Kundan/-

AFR/NAFR	N.A.
CAV DATE	N.A.
Uploading Date	21.07.2017
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