

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No. 102 of 2017

Arising out of P.S. Case No. - null Year - null Thana - null District - SITAMARHI

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Md. Azmatullah Rahmani, Son of Leyakat Mansoori, Resident of Village - Dumari Khurd, Police Station - Mejerganj, District - Sitamarhi, at present Imam, Majarsharif Masjeed (Near Hon'ble High Court), Police Station - Kotwali, District - Patna

.... Petitioner

Versus

1. The State of Bihar through the District Magistrate, Sitamarhi
2. The District Magistrate, Sitamarhi
3. The Superintendent of Police, Sitamarhi
4. The S.H.O., Mejerganj Police Station, District - Sitamarhi

.... Respondents

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Appearance :

For the Petitioner : Md. Shamimul Hoda, Advocate
Mr. Surya Narayan Yadav, Advocate
For the Respondents : Mr. Sheo Shankar Prasad, SCVIII

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 20-04-2017

Heard learned counsels for the parties.

2. The petitioner has invoked the writ jurisdiction of this Court to quash the order dated 27.05.2016 passed by the learned Collector, Sitamarhi in Confiscation Case No. 23 of 2016 whereby the learned Collector has proposed for auction sale of the confiscated motorcycle of the petitioner.

3. The motorcycle of the petitioner was seized in connection with Mejerganj Police Station Case No. 94 of 2016, a case under Sections 272 and 273 of the Indian Penal Code as well as under Section 47 of the Excise Act.

4. Submission of the petitioner is that the petitioner is owner of the said motorcycle bearing Registration No. BR 30H/5892



and had filed a petition before the learned court below for release of the same. However, in the meantime, the learned Collector confiscated the said motorcycle.

5. Learned counsel for the respondents submits that the petitioner has not raised the issue before the learned Collector, Sitamarhi. In the circumstances, the writ application should not be entertained unless the competent authority had opportunity to apply its mind on the prayer of the petitioner.

6. It appears that in L.P.A. No. 1647 of 2015 (Baleshwar Roy Versus The State of Bihar & Ors.), the substantial question regarding the power of the Collector to confiscate the animal, vehicle, vessel or other conveyance without trial is involved. The deprivation of a property can be ordered by a Court only after the trial of the criminal case is also involved for consideration besides other question of laws framed therein and this Court had ordered interim release of the vehicle pending hearing of the appeal.

7. Yet another Division Bench judgment of this Court in C.W.J.C. No. 1791 of 2017 (Krishna Kumar Singh Versus The State of Bihar & Ors.) ordered release of the vehicle and passed the following orders:-

“The petitioner has invoked the writ jurisdiction of this Court for release of Bajaj Pulsar Motor Cycle bearing registration No. BR44D- 7186 seized by the Bihar Police in connection with Complaint Case No. 286(O) of 2016 registered under Section 47(a) and



53(b) of the Bihar Excise (Amendment) Act, 2016, which has been sent to the learned District Magistrate-cum- Collector, Buxar for confiscation.

The questions in respect to confiscation of vehicle by the concerned authorities have been referred to the Larger Bench in L.P.A. No. 1647 of 2015. Since the very issue is pending consideration before the Larger Bench, we deem it appropriate to order release of Bajaj Pulsar Motor Cycle bearing registration No. BR44D- 7186 to the petitioner on furnishing surety bonds to the satisfaction of the District Magistrate-cum-Collector, Buxar in connection with Complaint Case No. 286(O) of 2016 subject to the condition that the petitioner shall make available the vehicle in question before the authority concerned as and when required during the proceedings under the Bihar Excise Act.”

8. Considering the aforesaid judgments of this Court, let the referred motorcycle of the petitioner be released in favour of the petitioner, by way of ad interim custody, on execution of surety bond of Rs.60,000/- (rupees sixty thousand) along with two sureties to the satisfaction of the learned Collector concerned in connection with Confiscation Case No. 23 of 2016, with further condition that the petitioner shall not dispose of the same and shall produce as and when required.

9. This order would be subject to the result of L.P.A. No. 1647 of 2015. Accordingly, this application stands disposed of.

(Birendra Kumar, J)

Kundan

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