

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.674 of 2017

Arising Out of PS.Case No. -null Year- null Thana -null District-
EASTCHAMPARAN(MOTIHARI)

- =====
1. Hari Kishore Yadav @ Hari Kishore Prasad Yadav, son of Punit Ray, resident of Village- Bela Jitpur, P.O.- Chanari, P.S.- Jitana, District- East Champaran.

.... Petitioner/s

Versus

1. The State of Bihar Through The Principal Secretary, Home Department, Government of Bihar.
2. The Superintendent of Police, East Champaran at Motihari.
3. The Station House Officer, Chouradano, P.S., District- East Champaran.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Karandeep Kumar, Advocate
For the Respondent/s : Md. Naushaduzzoha, AC to SC-1

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 18-07-2017

Heard learned counsel for the petitioner and learned counsel for the State-respondent.

The petitioner has invoked the writ jurisdiction of this Court to quash the order dated 23.09.2016 passed, in N.D.P.S. Case No.45 of 2016, by the learned Sessions Judge-cum-Special Judge, East Champaran at Motihari, whereby the prayer of the petitioner to release the seized motorcycle bearing registration No.BR-05-8476, two Samsung mobiles and cash of Rs.14,500/- Indian currency and Rs.2,000/- Nepali currency was refused on the ground of the provisions of Section 60 of the Narcotics Drugs and Psychotropic Substance Act and on accepting the argument of learned counsel for the Narcotic Bureau that the Narcotic Bureau is going to confiscate the said vehicle.



There is no dispute that the referred motorcycle belongs to the petitioner. By filing supplementary affidavit the petitioner has produced receipt of purchase of the seized mobile phones and no other claimant is there. Moreover, the seized cash amount is not needed during the course of trial.

Section 60(3) of the Narcotic and Psychotropic Substances Act, 1985, is reproduced below, which is relevant for this purpose.

“Any animal or conveyance used in carrying any narcotic drugs or psychotropic substance or controlled substance, or any article liable to confiscation under sub-section (1) or sub-section (2) shall be liable to confiscation, unless the owner of the animal or conveyance proves that it was so used without the knowledge or connivance of the owner himself, his agent, if any, and the person-in-charge of the animal or conveyance and that each of them had taken all reasonable precautions against such use.”

A perusal of the aforesaid provision makes it clear that confiscation of the vehicle cannot be ordered unless the owner is given opportunity to prove that whatever has been alleged to be seized was without his knowledge or connivance. Therefore, only on the ground that a confiscation proceeding is proposed, it cannot be said that vehicle should be allowed to be rotten in custody. Therefore, I do not find any reason in refusal of the prayer of the petitioner to have ad-interim custody of the above referred vehicle with condition that the petitioner shall not dispose of the same without permission of the Court and shall produce as and when required by the Court.

Similarly, other articles as such mobile phones and cash are not to be used for the purpose of carrying any narcotic drugs. Hence, there is no reason to refuse the ad-interim custody of the same to the petitioner. Accordingly, the impugned order is hereby quashed and it is directed that let



the motorcycle, the Samsung mobile phones and cash be released by way of ad-interim custody in favour of the petitioner on petitioner’s execution of surety bond of Rs.60,000/- (Sixty Thousand) not in the form of bank guarantee or cash along with two sureties of the like amount to the satisfaction of the learned Court-below, with condition that the petitioner would not dispose of the said motorcycle without permission of the authority concerned and shall produce as and when required by the Court.

Accordingly, the writ application stands disposed of.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	21.07.2017
Transmission Date	21.07.2017

