

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No. 846 of 2017

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

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Manoj Kumar Yadav, Son of Kashi Nath Choudhary, Resident of Village Balesara
Tola Jailuhatta, Police Station Uckhagawn, District Gopalganj

.... Petitioner/s

Versus

1. The State of Bihar
2. The Excise Commissioner, Bihar, Patna
3. The District Magistrate, Gopalganj
4. The Superintendent of Police, Gopalganj

.... Respondent/s

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Appearance :

For the Petitioner : Mr. Milind Kumar Mishra, Advocate

For the Respondents : Mr. Anil Kumar Sinha, G.A.-I

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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 claims to be owner of Mahindra TUV 300 four wheeler vehicle bearing registration no. BR28L 7832 which was seized in connection with Vishambharpur P.S. Case No. 51 of 2016 registered for alleged violation of Sections 272, 273, 420/34 of the Indian Penal Code and Section 30(a) of the Bihar Prohibition and Excise Act, 2016. The vehicle was confiscated by the Collector-cum-District Magistrate, Gopalganj in Confiscation (Excise) Case No. 104/2016 by order dated 07.03.2017.

3. The aforesaid order of confiscation has been challenged in this writ application under Articles 226 and 227 of the Constitution of India.

4. 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.

5. 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.

6. 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.

7. 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.

8. 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.

9. Accordingly, this application stands disposed of.

(Birendra Kumar, J)

Kundan/-

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

