

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1055 of 2017

Arising Out of PS.Case No. -null Year- null Thana -null District- MADHUBANI

- =====
1. Umesh Sah @ Umesh Kumar Sah, son of Ram Lakhan Sah, resident of Village-Baurhar, Police Station- Khirhar, District- Madhubani.

.... Petitioner/s

Versus

1. The State of Bihar Through The Secretary, Excise Department, Patna.
2. Divisional Commissioner, Excise Department, Patna.
3. District Magistrate-cum-Collector, Madhubani.
4. The Superintendent of Police, Madhubani.
5. The S.H.O. Rahika, District- Madhubani.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Sanjeev Ranjan, Advocate
For the Respondent/s : Mr. Vivek Prasad, GP-7

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 26-07-2017

Heard learned counsel for the petitioner and the State.

Two motorcycles of this petitioner bearing registration Nos. BR32R-2353 and BR32R-7581 were seized in connection with Rahika P.S. Case No.43 of 2017, a case under Section 30(a) and 37(c) of the Bihar Prohibition and Excise Act, 2016.

The petitioner approached before the learned Court-below for ad interim release of the said motorcycles and the prayer was refused for the reason that Section 60 of the Act bars jurisdiction of the court to entertain application for release of the vehicle.

Submission is that the petitioner has no information



whether confiscation proceeding has been initiated for confiscation of the aforesaid vehicles.

However, 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, prayer is for ad interim release of the vehicles.

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.

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 vehicles, let referred motorcycles be released in favour of the petitioner by way of ad interim custody on execution of surety bond of Rs.50,000/- (Fifty Thousand) for each of the vehicles (not in the form of cash/Bank Guarantee) along with two sureties of the like amount with condition that the petitioner would not dispose of the said vehicles 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.



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

Mkr./-

(Birendra Kumar, J)

AFR/NAFR	NAFR
CAV DATE	
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