

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1079 of 2017

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1. Babban Rai, Son of Late Shree Kuber Rai, resident of Village-Ratanpurva, P.O. Shivrampur, P.S. Chand, District Kaimur at Bhabua, at present residing at House No. 365/4, Ward No. 16, Ranjit Nagar, Sherpur Kalan, Ludhiana, P.S. Focal Point Punjab- 141010 Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Registration, Excise and Prohibition, Government of Bihar
2. The Divisional Commissioner, Department of Excise, Patna Division, Patna
3. The District Collector, Kaimur at Bhabua
4. The Superintendent of Police, Kaimur at Bhabua Respondents

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Appearance :

For the Petitioner : Mr. Anjani Kumar Sinha No-1, Adv.

For the Respondents : Mr. Vivek Prasad, GP VII

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL ORDER

2 08-08-2017

Heard the parties.

This writ application has been preferred by the petitioner for quashing the order, dated 27.01.2017, passed in Confiscation (Excise) Case No. 35 of 2016-2017 by the Collector, Kaimur at Bhabhua, vide Annexure 4.

The aforesaid confiscation case started for confiscation of Bolero four wheeler of the petitioner bearing registration no. PB-12H-0047, which was seized in connection with Chand P.S. Case No. 114 of 2016 for alleged violation of the Excise Laws.

Submission of the learned counsel for the petitioner is that the impugned order would reveal that a penalty of Rs.1,00,000/- (rupees one lakh) has been imposed on the petitioner as a condition precedent to avoid confiscation of the vehicle. The pre-trial penalty is bad in law. His, further, submission is that authority of the Collector to confiscate is under challenge in **L.P.A. no. 1647 of 2015 (Baleshwar Roy Vrs. The State of Bihar & Ors.)** on the ground that the said power is exercisable by a judicial authority, hence, till pendency of the Letters Patent Appeal, aforesaid, operation of the impugned order may be stayed and the vehicle may be released in favour of the petitioner, by way of interim custody.

Learned counsel for the respondents does not dispute



the factual position of the pendency of the aforesaid question before a larger Bench of this Court in **L.P.A. No. 1647 of 2015 (Baleshwar Roy Vrs. The State of Bihar & Ors.)**. However, submits that there is provision of appeal against the impugned order, hence, the petitioner has got statutory remedy, therefore, this Court would not exercise extra ordinary jurisdiction under Article 226 of the Constitution of India.

The learned counsel for the petitioner has relied upon a Division Bench judgment of this Court in C.W.J.C. No. 1791 of 2017 wherein interim release of the vehicle was ordered, considering the pendency of the aforesaid Letters Patent Appeal.

Considering the pendency of the aforesaid issue before a larger Bench of this Court in **L.P.A. No. 1647 of 2015 (Baleshwar Roy Vrs. The State of Bihar & Ors.)**, let the operation of the impugned order remain stayed till disposal of the Letters Patent Appeal, aforesaid, and the same shall be subject to the result of the Letters Patent Appeal.

Let the referred four wheeler be released in favour of the petitioner on execution of bond of Rs.6,00,000/- (rupees six lakh) (not in the form of bank guarantee or cash) along with two sureties of the like amount each to the satisfaction of the Collector, Kaimur at Bhabhua,

With the aforesaid observations, this application stands **disposed off**.

(Birendra Kumar, J)

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