

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1491 of 2017

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

- =====
1. Dilip Sah Son of Bhagwan Sah, R/o Village- Dharampur, Post Office Susta Mohammadpur, P.S.- Sakara, District- Muzaffarpur.

.... Petitioner/s

Versus

1. The State of Bihar Through Chief Secretary, Government of Bihar, Patna.
2. The Principal Secretary, Excise, Government of Bihar.
3. The District Magistrate, East Champaran at Motihari.
4. The Superintendent of Police, East Champaran at Motihari,
5. The Excise Superintendent, Department of Excise, East Champaran at Motihari.
6. The Officer In Charge of Kundawa Chainpur Police Station, District- East Champaran at Motihari.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Choudhary Shyam Nandan, Advocate
For the Respondent/s : Mr. Vivek Prasad, GP-7

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 13-09-2017

Heard learned counsel for the parties.

2. The petitioner is owner of Bolero vehicle bearing registration No. BR-06PA/2766. The said vehicle was seized in connection with Kundawa Chainpur P.S. Case No.37 of 2017, a case registered for alleged violation of the Excise laws.

3. The present writ application has been filed for direction to the respondents to release the said vehicle and further issuance of a writ of certiorari to quash the order dated 01.06.2017 passed in Cr. Revision No.143 of 2017 by learned District & Sessions Judge, East



Champan, Motihari, whereby the order by which the petition for release of the Bolero was dismissed by the Sub-Divisional Judicial Magistrate, Sikarahana Dhaka, East Champaran at Motihari, has been affirmed in view of Section 60 of the Bihar Prohibition and Excise Act, 2016.

5. Contention of the learned counsel for the petitioner is that the power of the executive authority to confiscate the vehicle is pending consideration in **LPA No.1647 of 2015 (Baleshwar Roy V. The State of Bihar & Ors.)** before a larger Bench of this Court. Hence, till adjudication of that dispute the interim release of the vehicle may be ordered in favour of the petitioner otherwise the vehicle would get rotten in the police lockup.

6. Learned counsel for the respondent submits that Section 60 of the Bihar Prohibition and Excise Act, 2016, bars the jurisdiction of the Court to entertain application for release of the seized articles including the vehicles. Hence, the prayer before the Court-below is apparently not entertainable which had in fact not been entertained by the Court-below.

7. In the circumstances, for substantial justice, let the vehicle, in question, be released in favour of the petitioner by way of ad interim custody on execution of surety bond of Rs.10,00,000/- (Ten Lacs), not in the form of cash/Bank Guarantee, along with two



sureties of the like amount each to the satisfaction of the concerned authority with condition that the petitioner would not dispose of the said vehicle without permission of the authority concerned and shall produce as and when required by the Court. The release shall be subject to the result of the L.P.A. aforesaid.

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

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	15.09.2017
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