

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No. 1228 of 2017

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

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Digambar Kumar @ Digambar Sah, Son of Sri Devendra Kumar, Resident of
Jyotish Vihar Colony, P.S. Industrial Area, District Bhagalpur

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Home, of Bihar Patna.
2. The District Magistrate, Bhagalpur.
3. The Senior Superintendent of Police, Bhagalpur.
4. S.H.O. Mojahidpur Police Station, Bhagalpur.
5. S.H.O. Babarganj Out-post, Mojahidpur, Bhagalpur.
6. Block Supply Officer, Sabour-cum-Incharge Town Area 39 to 51, Bhagalpur.

.... Respondents

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Appearance :

For the Petitioner : Mr. Dr. Manoj Kumar, Advocate

For the Respondents : Mr. P.K. Verma, AAG-III

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 11-08-2017

Heard learned counsels for the parties.

2. The Pick-up Van of the petitioner bearing registration No. BR-10G-3396 was seized loaded with rice along with some other trucks from near a godown at Bhagalpur and Mojahidpur (Babarganj) P.S. Case No. 121 of 2016 was registered under Section 7 of the Essential Commodities Act.

3. The petitioner filed a petition on 29.05.2017 before the learned Sub-Divisional Judicial Magistrate, Bhagalpur for release of the Pick-up Van on the ground that petitioner is the owner of the Pick-up Van and no purpose would be served in continuance of the seizure of the Pick-up Van rather it would cause external and



internal damage to the vehicle.

4. By order dated 12.06.2017, the learned Sub-Divisional Judicial Magistrate, Bhagalpur rejected the prayer of the petitioner on the ground that confiscation proceeding is going on before the District Magistrate, Bhagalpur.

5. 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.

6. Learned counsel for the State-respondent submits that he has no objection.

7. 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.

8. 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.

9. 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 or cash) of Rs.5,00,000/- (rupees fife 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.

10. Accordingly, this application stands disposed of.

(Birendra Kumar, J)

Kundan/-

AFR/NAFR	N.A.
CAV DATE	N.A.
Uploading Date	12.08.2017
Transmission Date	12.08.2017

