

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1398 of 2017

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

=====

Shyam Kumar Sah Son of Pairu Sah, resident of village Nima, Police Station Jamui, District Jamui.

.... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department, Government of Bihar
2. The S.P. Jamui.
3. The S.H.O. Khaira P.S. Camp, Badaldih, Jamui.
4. The D.M. Jamui.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Manmohan Kumar, Advocate
For the Respondent/s : Mr. Vikash Kumar, SC-11

=====

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 01-09-2017

Heard learned counsel for the parties.

2. The petitioner is owner of Scorpio bearing registration No. BR-46P/0446. The said vehicle was seized in connection with Khaira P.S. Case No.179 of 2016, 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.

4. Submission of the learned counsel for the petitioner is that the petitioner had approached the learned Chief Judicial Magistrate, Jamui, for release of the vehicle. By order dated 01.10.2016 and 04.10.2016, the Chief Judicial Magistrate, Jamui,



directed respondent No.3 to release the aforesaid vehicle in favour of the petitioner but the same has not been released.

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	05.09.2017
Transmission Date	05.09.2017

