

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.2909 of 2017

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Mudrika Prasad, Son of Dhupan Sah, Resident of Village - Panikap Khurd,
Police Station - Raipur, District - Sonbhadra (U.P.) At present Village-
Sikari, Police Station- Adhoura, District Kaimur, Bhabua.

.... Petitioner/s

Versus

1. The State of Bihar, through the Secretary, Forest and Environment
Department, Government of Bihar, Patna.
2. The District Magistrate, Kaimur at Bhabua.
3. The Divisional Forest Officer-cum-Authorized Officer, Kaimur-Forest
Division, Bhabua.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dhaneshwar Prasad Gupta

For the Respondent/s : Mr. Chitranjan Sinha (AAG2)

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CORAM: HONOURABLE MR. JUSTICE DINESH KUMAR SINGH
ORAL ORDER

3 11-08-2017 Heard Mr. Dhaneshwar Prasad Gupta, learned
counsel for the petitioner and Mr. Shailendra Sinha, learned A.C.
to A.A.G.-2.

The present writ application has been filed for a
direction to respondent no.3, the Divisional Forest Officer-cum-
Authorized Officer, Kaimur Forest Division, Bhabhua for
provisional release of the vehicle/truck of the petitioner, bearing
Registration No. UP 64 HI 507, during pendency of the
confiscation Case No. 40 of 2016, arising out of Forest Case No.
84F of 2016.

It is submitted by learned counsel for the petitioner
that on 13.11.2016, the truck in question, belonging to the



petitioner was seized by the In-charge Forest Officer, on the Bhabhua-Mohania main road near Akhleshpur, since the truck in question was carrying forest wood. Consequently, Forest Case No. 84F of 2016 was registered under Sections 33, 41, 42, 52 and 64 of the Indian Forest Act, 1927 (hereinafter referred to as 'the Act') and the seizure list was prepared. The same has been brought on record, as Annexure-2 to the writ application. The driver of the truck was arrested from the truck and his statement was recorded by the authorities, who suggested that the wood was being carried for domestic use.

Consequently, Confiscation Case No. 40 of 2016 was registered and notices were issued. The petitioner and the driver of the truck appeared in confiscation proceeding and filed their show cause. On 23.11.2016, the petitioner filed an application before respondent no.3, the Divisional Forest Officer-cum-Authorized Officer, Kaimur Forest Division, Bhabhua, as contained in Annexure-4, for provisional release of the seized vehicle, on the ground that the same is being junked in the open sky, but till date, the said application has not been disposed of. The petitioner has also brought on record the photocopy of the owner-book and National permit of the truck, as contained in Annexure-1, and is also ready to submit the same before respondent no.3, the



Divisional Forest Officer-cum-Authorized Officer, Kaimur Forest Division, Bhabhua. The petitioner has relied upon the order dated 16.02.2015, passed by a co-ordinate Bench of this Court, in C.W.J.C. No. 377 of 2015, whereby the provisional release of the several vehicles were ordered. The relevant portion of the order reads as follows:-

“As I have taken note of hereinabove, the vehicles of these petitioners stand seized on allegation of being loaded with illegally mined stone chips. Though learned counsel for the respective petitioners have tried to defend the load carried on each of the vehicles but considering that the matter is pending adjudication before the statutory authority, this Court would express no opinion thereon. However taking note of the circumstances that these vehicles are lying unattended under the open sky to face the vagaries of weather, this Court is of the opinion that allowing these vehicles to turn obsolete would benefit none rather it would only lead to losses and thus this Court would deem fit and proper to order for the provisional release of the vehicles subject to furnishing of supporting papers of ownership and security as deem fit and proper by the authorized officer and which release obviously would be subject to final outcome of the confiscation proceedings. In the circumstances discussed, this Court would direct the Divisional Forest Officer, Rohtas Forest Division, Rohtas cum Authorized Officer under the Forest Act, 1927 in seisin of the respective confiscation cases which are subject matter of the present proceedings to order for the release of the respective vehicles in favour of the petitioners within eight weeks of the receipt/production of a copy of the order subject to the fulfillment of the following conditions.

- (a) The petitioner shall produce all original papers supporting the ownership of the vehicle in question including the registration papers, the insurance



paper, the tax token and the pollution certificate.

(b) The petitioner shall file an undertaking in the form of an affidavit that he shall not alienate the vehicle or transfer the vehicle in favour of any third party during the pendency of the confiscation proceedings and shall produce the vehicle as and when required in the confiscation proceedings.

(c) The petitioner shall furnish such security as deem fit and proper by the Divisional Forest Officer-cum-Authorized Officer, Rohtas at Sasaram which shall neither be in the form of cash nor bank guarantee; and

(d) The release of the vehicle shall be governed by the final outcome of the confiscation proceedings.

With the observations and directions aforementioned, the writ petitions are disposed of.”

Hence, the present writ application.

It is submitted by learned A.C. to A.A.G.-2 that, the petitioner himself is getting the matter adjourned before respondent no.3, the Divisional Forest Officer-cum-Authorised Officer, Kaimur Forest Division, Bhabhua. The driver of the truck has also filed an application for release of the vehicle in question and an application was also filed before respondent no.3, the Divisional Forest Officer-cum-Authorised Officer, Kaimur Forest Division, Bhabhua on 25.01.2017 with a prayer for dropping the confiscation proceeding and for compounding of the case. The



said application has been brought on record, as Annexure-C to the counter affidavit, and these facts have not been controverted by learned counsel for the petitioner.

Having heard the counsel for the parties, seizure of the truck and initiation of the confiscation proceeding are not in dispute. This has also not been controverted by learned counsel for the respondent-State, that the petitioner filed an application for release of the vehicle in question on 23.11.2016.

Section 53 of the Act clearly provides power of the Forest Officer to release the property seized under Section 52 of the Act. Section 53 of the Act reads as follows:-

“53.Power to release property seized under section 52.-Any Forest-officer of a rank not inferior to that of a Ranger who, or whose subordinate, has seized any tools, boats, carts or cattle under section 52, may release the same on the execution by the owner thereof a bond for the production of the property so released, if and when so required, before the Magistrate having jurisdiction to try the offence on account of which the seizure has been made.”

There is nothing on record to suggest that the jurisdiction under Section 53 of the Act, in spite of the application for release being filed, has been exercised by respondent no.3, the Divisional Forest Officer-cum-Authorised Officer, Kaimur Forest Division, Bhabhua till date. The counter affidavit, filed on



11.04.2017, does not reflect whether confiscation proceeding has been concluded or not.

In the circumstances, it is desirable on the part of respondent no.3, the Divisional Forest Officer-cum-Authorised Officer, Kaimur Forest Division, Bhabhua to dispose of the application of the petitioner dated 23.11.2016, which has been filed for release of the vehicle in question, as contained in Annexure-4, within a period of six weeks from the date of receipt/production of a copy of this order, provided the petitioner produces and submits all the original papers supporting the ownership of the vehicle in question including the registration papers, insurance paper, the tax token and the pollution certificate. The petitioner shall further submit an undertaking on affidavit that he shall not alienate the vehicle, or transfer the vehicle in favour of any third party during the pendency of the confiscation proceedings and shall produce the vehicle before the Magistrate, in seisin of the confiscation proceeding or before respondent no.3, as and when required, during the confiscation proceeding and he will also regularly appear in the confiscation proceeding. Respondent no.3 will be at liberty to put such other conditions by way of surety or bank guarantee for release of vehicle in question.

With the above observation, the present writ



application is disposed of.

(Dinesh Kumar Singh, J)

Amrendra/-

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