

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.885 of 2017

Arising Out of PS.Case No. -null Year- null Thana -null District- SASARAM (ROHTAS)

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1. Amit Kumar, Son of Brij Bihari Singh, Resident of Mohalla Kuraich Mahavir Asthan, Ward No. 5, P.O. and P.S. – Sasaram, District – Rohtas
 2. Kashinath Singh, Son of Late Bhola Singh, Resident of Mohalla – Kuraich, Police Station Sasaram, District Rohtas
 3. Ranjeet Singh, Son of Sri Kashinath Singh, Resident of Mohalla – Garakshani, Kuraich, P.O. and P.S. Sasaram, District Rohtas.

.... Petitioners

Versus

1. The State of Bihar, through the Principal Secretary, Department of Excise and Prohibition, Government of Bihar, Patna
2. The District Magistrate, Rohtas at Sasaram
3. The Excise Inspector, Mobile Group, Rohtas

.... Respondents

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Appearance :

For the Petitioners : Mr. Rajani Kant Singh, Advocate
For the Respondents : Mr. Vivek Prasad, G.P.VII

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 24-07-2017

Heard learned counsels for the parties.

The petitioners claim to be owners of motorcycles

i.e. Splender Plus bearing registration no. BR24T 0588, Bajaj Discover bearing registration no. BR24H6223 and Super Splender bearing registration no. BR24Q7281 respectively which were seized in connection with Excise Case No. 276 of 2016 registered for alleged violation of Sections 30(a) and 37(b) of the Bihar Prohibition and



Excise Act, 2016. The vehicles were confiscated by the District Magistrate, Rohtas at Sasaram in Excise Confiscation Case No. 12 of 2016.

The aforesaid order of confiscation has been challenged in this writ application under Articles 226 and 227 of the Constitution of India.

Submission of the learned counsel for the petitioners 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 petitioners as no purpose is going to be served by its continued detention.

Learned counsel for the State-respondent submits that there is provision of appeal under Section 92(2) of the Bihar Prohibition and Excise Act, 2016 against the impugned order before the Commissioner, hence, the petitioners have got statutory remedy to ventilate their grievances.

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 petitioners till adjudication of the aforesaid issue.

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.

Let the referred vehicle be released in favour of the petitioners by way of ad interim custody on execution of surety bond (not in the form of bank guarantee or cash) of Rs.50,000/- (rupees fifty thousand) along with two sureties of the like amount each for each vehicle with condition that the petitioners shall not dispose of the same without permission of the Court and shall produce as and when required.

Accordingly, this application stands disposed of.

(Birendra Kumar, J)

Kundan/-

AFR/NAFR	N.A.
CAV DATE	N.A.
Uploading Date	26.07.2017
Transmission Date	26.07.2017

