

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1805 of 2017

Arising Out of PS.Case No. -null Year- null Thana -null District- NALANDA (BIHARSHARIFF)

- =====
1. Binod Rabidas S/o Ram Chandra Rabidas
 2. Guddu Rabidas S/o Binod Rabidas Both are resident of Village- Karah, P.S.- Silao, District- Nalanda.

.... Petitioner/s

Versus

1. The State of Bihar, through Principal Secretary, Excise Department, Government of Bihar, Old Secretariat, Patna.
2. The District Magistrate, Nalanda.
3. The Superintendent of Police, Nalanda.
4. The District Supply Officer, Nalanda.
5. The S.H.O. Laheri, Nalanda, District- Nalanda.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Raj Kishor Prasad, Advocate
For the Respondent/s : Mr. Vivek Prasad, GP-7

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 22-11-2017

Heard learned counsel for the parties.

2. Rupees 13,000/- and one Lawa Mobile which were seized from petitioner No.1 Binod Rabidas. Similarly Rs.120/-, four ATM Cards, PAN Card, Adhar Card and Lawa Mobile, which were seized from petitioner No.2, Guddu Rabidas, in connection with Laheri P.S. Case No.183 of 2017, a case registered for alleged violation of the Bihar Excise Law.

3. The present writ application has been filed for a direction to the respondents to release the above items in favour of the petitioners.

4. Submission of the learned counsel for the petitioner is that the petitioners had approached the learned Additional Sessions Judge-VI-cum-Special Judge, Excise, Nalanda at Biharsharif, for



release of the referred items. By order dated 21.06.2017, the learned Additional Sessions Judge-VI-cum-Special Judge, Excise, Nalanda at Biharsharif, has refused the prayer of the petitioners for release of the referred articles.

5. Contention of the learned counsel for the petitioners is that the power of the executive authority to confiscate the vehicle/articles is under challenge and pending consideration in **LPA No.1647 of 2015 (Baleshwar Roy V. The State of Bihar & Ors.)** before a larger Bench of this Court. Hence, still adjudication of that dispute the interim release of the articles may be ordered in favour of the petitioners otherwise the same 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 referred articles be released in favour of the petitioners after proper verification of the document of the ownership, by way of ad interim custody on execution of surety bond of Rs.10,000/- (Ten Thousand), not in the form of cash/Bank Guarantee, along with two sureties of the like amount each to the satisfaction of the learned Court-



below/concerned authority where the case is pending. 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	25.11.2017
Transmission Date	25.11.2017

