

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.920 of 2017

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1. Shambhu Kumar Son of Nageshwar Mandal, Resident of Village- Garh Mohni, Police Station- Gogri, District- Khagaria.

.... Petitioner

Versus

1. The State of Bihar, through the Principal Secretary, Excise Department, Government of Bihar, Patna.
2. The District Magistrate, Khagaria.
3. The Superintendent of Police, Khagaria.
4. The District Supply Officer, Khagaria.
5. The Station House Officer, Pasraha Police Station, Khagaria.

.... Respondents

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Appearance :

For the Petitioner : Mr. Manoj Kumar Singh, Adv.

For the Respondents : Ms Manisha Singh, A.C. to G.P. VII

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL ORDER

2 29-06-2017

Heard the parties.

The petitioner is owner of Bolero vehicle bearing registration no. BR-34G-8169. The said vehicle was seized in connection with Pasraha P.S. Case No. 21 of 2017 for alleged violation of excise laws as the same was carrying liquor. The petitioner filed a petition before the learned Additional Chief Judicial Magistrate, II, Khagaria, for release of the vehicle and prayer has been refused by the impugned order, dated 29.03.2017, on the ground that Section 60 of the Bihar Prohibition and Excise Act, 2016, bars jurisdiction of the Court.

Submission of the learned counsel for the petitioner is that the issue as to whether an executive authority has power to confiscate and auction the confiscated vehicle, which is exercisable only by a judicial authority, is under consideration before a larger Bench of this Court in L.P.A. No. 1647 of 2015.

Considering the aforesaid pendency in C.W.J.C. No.



1791 of 2017 a Division Bench of this Court ordered for release of the seized vehicle by way of interim custody in favour of the petitioner of that case.

The learned counsel for the respondents submits that the confiscation proceeding is pending and the reason of the learned Court below can not be faulted as Section 60 of the Act specifically bars the jurisdiction of the Court.

Considering the facts, aforesaid, specially the pendency of the issue of power of confiscation before a larger Bench of this Court, let the vehicle, in question, be released in favour of the petitioner by way of interim custody after verification of the ownership of the petitioner on execution of surety bond of Rs.6,00,000/- (rupees six lakh) along with two sureties of the like amount each with further condition that the petitioner shall not dispose off the said vehicle without permission of the Court and shall produce, as and when will be required.

The operation of the pending confiscation proceeding shall remain stayed till disposal of the L.P.A. No. 1647 of 2015 and shall be subject to the result of that Letters Patent Appeal.

With the aforesaid observation, this writ application stands disposed off.

(Birendra Kumar, J)

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