

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.2460 of 2017

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

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1. Sachidanand Kumar, S/o Late Shiv Mohan Yadav,
 2. Deepak Kumar S/o Late Ram Pratap Yadav, Both are R/o Village- Padrawan, P.S.- Konch, District- Gaya.

.... Petitioner/s

Versus

1. The State of Bihar Through The Principal Secretary, Food And Civil Supplies, Government of Bihar, Patna.
2. The District Magistrate Cum Collector , Gaya.
3. The Senior Superintendent of Police, Gaya.
4. The Sub Divisional Officer, Sadar, Gaya.
5. The Block Supply Officer, Konch, Gaya.
6. The Officer In Charge, Konch P.S, District- Gaya.

.... Respondent/s

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Appearance :
For the Petitioner/s : Mr. Manish Kumar No.2, Advocate
For the Respondent/s : Mr. S. Raza Ahmad, AAG-5

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 06-12-2017

Heard learned counsel for the parties.

2. Tractor and trailer bearing registration Nos. BR-02GA-6160 and BR-02GA/2162 of petitioner No.1 was found carrying wheat (total 43 bags) of Petitioner No.2, allegedly, to be sold in the black market and, accordingly, Konch P.S. Case No. 186 of 2017 was registered under Section 7 of the Essential Commodities Act.

3. Submission of the learned counsel for the petitioner No.2 is that wheat is not a controlled item and there is no need for



licence for storage or sale of the wheat. The requirement of licence has already been abolished by the Legislature. His further submission is that identical issue is pending consideration in L.P.A. No. 1647 of 2015 (**Baleshwar Roy vs. The State of Bihar & Ors.**) before the Full Bench of this Court for adjudication whether the Executive Authority can exercise such power even in respect of the uncontrolled items on the pretext of allegation that the same were found in the bags of FCI or the same were found in huge quantity.

4. I find substance in the submission of the petitioners aforesaid, hence, it is directed that further proceeding of confiscation case, if any, shall remain stayed till the disposal of the above referred L.P.A. and shall be subject to the result of the L.P.A. aforesaid.

5. By way of ad interim measure, let the seized wheat be released in favour of petitioner No.2, especially, considering the fact that wheat is not a controlled item and it is yet to be established during the trial that the same was stolen property. The release shall be subject to the execution of **bank guarantee of Rs.30,000/- (Thirty thousand) or sale deed of immovable property of equal value standing in the name of the petitioner No.2** to the satisfaction of the learned Court-below/authority concerned where the case is pending.

6. The tractor and trailer bearing registration Nos. BR-02GA-6160 and BR-02GA/2162 be also released, by way of ad



interim custody, in favour of its owner i.e. petitioner No. 1 on execution of surety bond of Rs.3,00,000/- (Three lacs) along with two sureties of the like amount to the satisfaction of the learned Court below/authority concerned where the case is pending, with condition that the petitioner No. 1 would not dispose of the said vehicle or put the same under encumbrance without permission of the authority concerned and shall produce as and when required by the Court.

7. With the aforesaid observation, this application stands disposed of.

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	08.12.2017
Transmission Date	08.12.2017

