

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No. 821 of 2017

Arising out of P.S. Case No. -null Year- null Thana -null District- SIWAN

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Jitendra Kumar Gupta, Son of Dhruv Shankar Prasad, Resident of Village - Purani Bazar, Maharajganj, P.S. - Maharajganj, District - Siwan

.... Petitioner

Versus

1. The State of Bihar through Principal Secretary Excise Act Department
2. The District Magistrate, Siwan
3. The Director General of Police, Bihar, Patna
4. The Superintendent of Police, District- Siwan
5. The Police Inspector cum Officer-in-Charge (S.H.O.), P.S.- Maharajganj, District- Siwan

.... Respondents

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Appearance :

For the Petitioner : Mr.

For the Respondents : Mr.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 11-07-2017

Heard learned counsels for the parties.

The petitioner claims to be owner of Platina Motorcycle bearing registration no. BR 29T 5972 which was seized in connection with Maharajganj P.S. Case No. 121 of 2016 for alleged violation of the Excise Laws.

By the impugned order dated 09.11.2016, the learned Additional Chief Judicial Magistrate-V, Siwan refused to release the vehicle in favour of the petitioner for the reason that Section 60 of the Bihar Prohibition and Excise Act, 2016 bars jurisdiction of the court in such matter. The said order was affirmed by the learned 5th Additional Sessions Judge, Siwan in Cr. Revision Petition No. 343 of 2016 on 30.01.2017.

Both the orders are under challenge in this criminal writ petition.

The State-respondents, in their counter affidavit, have challenged the prayer on the ground that both the orders of the courts



below are consistent with the law applicable, hence, requires no interference.

Considering the fact that power of the Executive Authority to confiscate and auction the seized articles, which is a judicial power, is under challenge before a Larger Bench in L.P.A. No. 1647 of 2015 (**Baleshwar Roy vs. The State of Bihar & Ors.**) as well as considering the fact that different Division Benches of this Court have ordered interim release of the seized vehicle in favour of the owner of the vehicle, let the vehicle in question be released in favour of the petitioner on execution of surety bond of Rs.50,000/- (rupees fifty thousand) along with two sureties with condition that the petitioner shall not dispose of the same and shall produce the vehicle as and when required by the court.

This order shall be subject to the final result of the pending L.P.A. aforesaid.

With the aforesaid observation, the writ application stands disposed of.

(Birendra Kumar, J)

Kundan/-

AFR/NAFR	N.A.
CAV DATE	N.A.
Uploading Date	13.07.2017
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