

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1170 of 2017

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

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1. Achchelal Chauhan Son of Bhekhi Chauhan, R/o Village- P.S.- Uchkagaon,
District- Gopalganj.

.... Petitioner/s

Versus

1. The State of Bihar Through The Principal Secretary, Department of Excise And Prohibition, Bihar, Patna.
2. The District Magistrate Gopalganj.
3. The Superintendent of Police, Gopalganj.
4. The Officer in Charge, Gopalpur Police Station, District- Gopalganj.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Dharmveer, Advocate

For the Respondent/s : Mr. Deepak Kumar, AC to SC-5

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 24-08-2017

The petitioner is owner of Tata Bus bearing registration No. UP-32z/2114. The said bus was seized in connection with Gopalpur P.S. Case No.48 of 2017, a case registered for alleged violation of the excise laws.

2. The present writ application has been filed for direction to the respondents to release the said vehicle.

3. Submission of the learned counsel for the petitioner is that the petitioner had approached the learned Additional District Judge-II, Gopalganj, for release of the vehicle. However, the same has not been released for the reason that proposal for confiscation of



the bus has already been sent to the competent authority.

4. Contention of the learned counsel for the petitioner is that the power of the executive authority to confiscate the vehicle is pending consideration in **LPA No.1647 of 2015 (Baleshwar Roy V. The State of Bihar & Ors.)** before a larger Bench of this Court. Hence, till adjudication of that dispute the interim release of the vehicle may be ordered in favour of the petitioner otherwise the vehicle would get rotten in the police lockup.

5. Learned counsel for the respondent submits that since the prayer of the petitioner is pending before the Court-below, this writ application is not maintainable for grant of same relief.

6. 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 bus, in question, be released in favour of the petitioner by way of ad interim custody on execution of surety bond of Rs.20,00,000/- (Twenty Lacs), not in the form of cash/Bank Guarantee, along with two sureties of the like amount each to the satisfaction of the concerned authority with condition that the petitioner would not



dispose of the said vehicle without permission of the authority concerned and shall produce as and when required by the Court. 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
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