

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No. 1129 of 2017

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

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Raju Sah, Son of Sakhi Chand Sah, Resident of Mohalla - Aliganj Maheshpur,
Abdul Qatil Lane, P.S. Mojahidpur (Babarganj), District - Bhagalpur

.... Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Home, Govt. of Bihar Patna.
2. The District Magistrate, Bhagalpur.
3. The Senior Superintendent of Police, Bhagalpur.
4. S.H.O. Mojahidpur Police Station, Bhagalpur.
5. S.H.O. Babarganj Outpost, Mojahidpur, Bhagalpur.
6. Marketing Officer of Ward No. 40 to 51, Bhagalpur Urban Area, Bhagalpur.

.... Respondents

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Appearance :

For the Petitioner : Mr. Dr. Manoj Kumar, Advocate

For the Respondents : Mr. Manish Kumar, G.P.-IV

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 11-08-2017

Heard learned counsels for the parties.

2. The petitioner claims to be owner of Pick-up Van vehicle bearing registration no. BR-10K-2059 which was seized in connection with Mojahidpur (Babbarganj) P.S. Case No. 09 of 2017 for alleged violation of Sections 420 and 409 of the Indian Penal Code as well as Section 7 of the Essential Commodities Act, 1955.

3. By the impugned order dated 01.06.2017, the learned Sub-Divisional Judicial Magistrate, Bhagalpur refused to release the vehicle in favour of the petitioner for the reason that confiscation proceeding is going on and Section 60 of the Bihar Prohibition and Excise (Amendment) Act, 2016 bars the jurisdiction of the court.

4. The aforesaid order is under challenge in this criminal writ petition.

5. The State-respondents, in their counter affidavit,



have challenged the prayer on the ground that the order of the court below is consistent with the law applicable, hence, requires no interference.

6. Considering the fact that power, of the Executive Authority to confiscate and auction the seized articles which is exercisable by a judicial authority, 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.6,00,000/- (rupees six lakhs) (not in the form of bank guarantee or cash) along with two sureties with condition that the petitioner shall not dispose of the same without permission of the Court and shall produce the vehicle as and when required by the court.

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

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

(Birendra Kumar, J)

Kundan/-

AFR/NAFR	N.A.
CAV DATE	N.A.
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