

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.157 of 2017

Arising Out of PS.Case No. 252 Year- 2016 Thana –Tajpur, District- SAMASTIPUR

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1. Kamdeo Kumar Daha, son of Ram Lakhan Daha, Resident of village- Singhia
Ghat, P.S.- Bibhutipur, District- Samastipur Petitioner

Versus

1. The State of Bihar Through The Principal Secretary, Excise Department Govt. of
Bihar
2. The Collector, Samastipur
3. The Superintendent of Police, Samastipur
4. The Officer-in-charge, Tajpur P.S., District- Samastipur
5. The I.O. of Tajpur P.S. Case No. 252/2016, Tajpur P.S., District- Samastipur
.... Respondents

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Appearance :

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

For the Respondents : Mr. Dr. Anil Kumar Upadhyaya, SC II

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 08-03-2017

Heard the learned counsel for the petitioner and the
State.

2. The petitioner claims to be owner of Mahendra
Bolero jeep, seized in connection with Tajpur P.S. Case No.
252 of 2016, a case under Sections 47A, 54 and 57 of the Bihar
Excise Amendment Act, 2016.

3. By the impugned order, dated 07.09.2016, passed in
Tajpur P.S. Case No. 252 of 2016, the learned Additional Chief
Judicial Magistrate, Samastipur, has refused to release the
vehicle on the ground that the same would be required during
trial.

4. The said order was challenged in Criminal Revision
No. 747 of 2016. The learned Sessions Judge, Samastipur, by
order, dated 02.11.2016, dismissed the revision application,
assigning a quite different reason that the petitioner failed to
produce any agreement that he had handed over the vehicle to
Manoj Kumar Das, who used the same allegedly in violation of
the provisions of the Bihar Prohibition and Excise Act, 2016,



which provides total prohibition of any type of liquor in the State of Bihar.

5. After hearing the parties, I am of the view that there was no impediment in allowing the interim custody of the vehicle by the learned Courts below in view of the provisions under Section 451 of the Criminal Procedure Code. The Court below could have imposed any condition for production of the vehicle as and when required as well as for non-disposal of the vehicle. No purpose would be served by allowing the vehicle to be rotten in the police lock-up.

6. More over, a similar question was considered by a Division Bench of this Court in Cr.W.J.C. No. 1791 of 2017 (Krishna Kumar Singh Vrs. The State of Bihar & Ors.). The relevant portion of the order, dated 16.02.2017, is being reproduced below :

“The petitioner has invoked the writ jurisdiction of this Court for release of Bajaj Pulsar Motor Cycle bearing registration No. BR44D-7186 seized by the Bihar Police in connection with Complaint Case No. 286(O) of 2016 registered under Sections 47(a) and 53(b) of the Bihar Excise (Amendment) Act, 2016, which has been sent to the learned District Magistrate-cum-Collector, Buxar for confiscation. The questions in respect to confiscation of vehicle by the concerned authorities have been referred to the Larger Bench in L.P.A. No. 1647 of 2015. Since the very issue is pending consideration before the Larger Bench, we deem it appropriate to order release of Bajaj Pulsar Motor Cycle bearing registration No. BR44D- 7186 to the petitioner on furnishing surety bonds to the satisfaction of the District Magistrate-cum-Collector, Buxar in connection with Complaint Case No. 286(I) of 2016 subject to the condition that the petitioner shall make available the vehicle in question before the authority concerned as and when required during proceedings under the Bihar Excise Act.



List this case after the decision in L.P.A. No. 1647 of 2015.”

7. Considering the aforesaid order and the provision of law, the impugned orders passed by the learned Additional Chief Judicial Magistrate as well as the learned revisional Court are not sustainable in law.

8. Hence, the impugned orders are set aside and it is directed that the vehicle, in question, be put in interim custody of the petitioner, on furnishing bond of Rs.8,00,000/- (rupees eight lakh) with the two sureties of the like amount each to the satisfaction of the Court below wherever the matter is pending as there is no other claimant of the vehicle and the petitioner produced prima facie material to substantiate that he is bonafide owner of the said vehicle, with further condition that the petitioner shall not dispose of the said vehicle without permission of the Court below during pendency of the case and shall produce as and when required by the Court below.

9. With the aforesaid observation, this application stands allowed.

(Birendra Kumar, J)

SA/-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	20.03.2017
Transmission Date	20.03.2017

