

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.944 of 2017

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

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1. Niraj Kumar Son of Gokaran Singh, Resident of Village- Rampur, P.S.- Narhat in the District- of Nawada.

.... Petitioner/s

Versus

1. The State of Bihar, Through The Principal Secretary, Excise Deptt., Bihar, Patna .
2. The Principal Secretary, Transport Department, Govt. Of Bihar, Patna.
3. The Collector-Cum-District Magistrate, Nawada.
4. Superintendent of Police, Nawada.
5. S.H.O. Rajauli P.S., Under the District of Nawada.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Raj Kumar, Advocate

For the Respondent/s : Mr. Anil Kumar Sinha, GA-1

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 22-08-2017

Heard learned counsel for the petitioner and the State.

Apache Motorcycle of this petitioner bearing registration No. BR27D-8922 was seized in connection with Rajauli P.S. Case No.132 of 2016, a case under Section 47(a) of the Bihar Excise (Amendment) Act, 2016.

The petitioner approached before the Collector, Nawada, for ad interim release of the said motorcycle and vide order dated 21.01.2017 passed in Excise Case No. 102(M) of 2016 the prayer was refused and the said motorcycle was confiscated.

Submission of the petitioner is that the power of the Executive Authority to confiscate the vehicle is under challenge in



LPA No.1647 of 2015 Baleshwar Roy V. The State of Bihar & Ors. before a larger Bench of this Court on the ground that such power is exercisable only by a judicial authority. In the circumstances, till pendency of the L.P.A. aforesaid operation of the impugned order be stayed and the vehicle in question be released in favour of the petitioner as no purpose is going to be served by its continued detention in police lockup.

Learned counsel for the State-respondent opposed the prayer on the ground that the authorities are competent under the provisions of Bihar Prohibition and Excise Act, 2106, to confiscate. Hence, the petitioner cannot get interim relief of release of the vehicle.

Considering the fact that authority of the executive to confiscate the seized vehicle under the Excise Act and other provisions is under consideration before a larger Bench of this Court as referred above, the operation of the impugned order shall remain stated till further order and shall be subject to the result of L.P.A. aforesaid.

Since no purpose would be served by continued detention of the said vehicle, let referred motorcycle be released in favour of the petitioner by way of ad interim custody on execution of surety bond of Rs.50,000/- (Fifty Thousand), not in the form of cash/Bank Guarantee, along with two sureties of the like amount with condition that the petitioner would not dispose of the said vehicles



without permission of the authority concerned and shall produce as and when required by the Court. This order shall be subject to the result of the L.P.A. aforesaid.

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

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
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