

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.1737 of 2017

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

- =====
1. Umesh Saw son of Sri Rohas Sao, resident of Village- Chiraila, Police Station- Belaganj, District- Gaya.
 2. Rakesh Das son of Late Brahmdeo Das, resident of Village- Beladih, P.S.- Belaganj, District- Gaya.

.... Petitioner/s

Versus

1. The State of Bihar, through the Principal Secretary Food & Consumer Protection Department, Govt. of Bihar, Patna.
2. The District Magistrate, Gaya.
3. The Sub Divisional Officer, Sadar Gaya.
4. The Block Supply Officer, Belaganj, District- Gaya.
5. The Officer In Charge, Police Station Belaganj, District Gaya.

.... Respondent/s

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Appearance :

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

For the Respondent/s : Mr. S. Raza Ahmad, AAG-5.

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR

ORAL JUDGMENT

Date: 09-10-2017

Heard learned counsel for the parties.

2. The Tempo vehicle of this petitioner bearing registration No.BR-2GA/4309 was seized in connection with Belaganj (Gaya) P.S. Case No.251 of 2017, a case registered under Sections 406/420 of the Indian Penal Code and Section 7 of the Essential Commodities Act, for the reason that the said tempo was carrying 11.5 quintals of wheat without any authority for the same.

3. Submission of the learned counsel for the petitioner is that wheat is not a controlled item. Hence, offence under Section 7 of the E.C. Act is not applicable. Moreover, no purpose would be served by continued detention of the seized vehicle in police lockup



till conclusion of the trial and only prayer in this writ application is for interim release of the vehicle and the wheat. He further submits 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. Hence, till disposal of the L.P.A. aforesaid, the interim custody may be ordered in favour of the petitioner.

4. Considering the pendency of the aforesaid issue for adjudication, let the interim custody of aforesaid vehicle as well as wheat be handed over in favour of the petitioner on execution of bank guarantee of Rs.1,50,000/- (One lac fifty thousand) to the satisfaction of the learned Additional Chief Judicial Magistrate-XI, Gaya, 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. This order shall be subject to the result of the L.P.A. aforesaid.

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

(Birendra Kumar, J)

Mkr./-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	12.10.2017
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