

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Writ Jurisdiction Case No.2424 of 2017**

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

- =====
1. Sanjeev Sharma, Son of Sri Shankar Sharma, Resident of Village- Saadpur, Police Station- Amarpur (Fullidumar), District- Banka.

.... .... Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary, Excise Department, Govt. of Bihar, Patna.
2. The District Magistrate, Banka.
3. The Superintendent of Police, Banka.
4. The Deputy Superintendent of Police, Banka.
5. The S.H.O. Banka (Barahat), Police Station- Banka.

.... .... Respondent/s

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**Appearance :**

For the Petitioner/s : Md. Nurul Hoda, Advocate

For the Respondent/s : Mr. Kumar Manish, SC-5

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**CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR**

**ORAL JUDGMENT**

**Date: 06-12-2017**

Heard learned counsel for the petitioner and the State.

2. The petitioner has invoked the writ jurisdiction of this Court to quash the order dated 15.09.2017 passed in connection with Confiscation (Excise) Case No.105 of 2016-17 by the Collector, Banka, under the Bihar Prohibition and Excise Act, 2016. By the said order the prayer of the petitioner to release the seized vehicle, i.e., Scorpio bearing registration No.BR10T/1103, which was seized in connection with Banka (Barahat) P.S. Case No.808 of 2016, has been refused and the referred vehicle has been confiscated.

3. Submission of the learned counsel of the petitioner is



that the continued seizure of the vehicle would serve no purpose and its confiscation and auction would amount to pre-trial punishment, which is not permissible in law and the same issue is pending consideration before a larger Bench of this Court in **LPA No.1647 of 2015 Baleshwar Roy V. The State of Bihar & Ors.** Hence, till adjudication of the aforesaid issue the operation of the impugned order be stayed and interim release of the vehicle be ordered as no purpose is going to be served by its continued detention in police lockup.

4. After hearing the parties and finding substance in the submission aforesaid regarding pendency of the issue before a larger Bench as to whether the executive authority can confiscate the seized vehicle before proof of guilt, the operation of the impugned order is stayed till adjudication of the aforesaid issue in the L.P.A. aforesaid and shall be subject to the result of the L.P.A. aforesaid.

5. Since commercial quantity of country-made liquor was recovered from the vehicle of the petitioner, let the same be released in favour of the petitioner by way of ad interim custody on execution of **bank guarantee of Rs.6,00,000/-(Six Lacs) or sale deed of immovable property of equal value standing in the name of the petitioner** to the satisfaction of the learned Court-below/authority concerned where the case is pending, 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.

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

**(Birendra Kumar, J)**

Mkr./-

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