

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.635 of 2017

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1. Hasina Bibi, Wife of Nasir Miyan, resident of Village- Durgawati, P.S.-
Durgawati, District- Kaimur at Bhabua Petitioner

Versus

1. The State of Bihar through the Principal Secretary, Department of Excise
Bihar, Patna.
2. The District Collector cum District Magistrate, Kaimur at Bhabua.
3. The S.H.O. Durgawati Police Station, District- Kaimur at Bhabua.
4. The Investigating Officer, Durgawati Police Station, District- Kaimur at
Bhabua.
5. The Assistant Sub Inspector, Durgawati Police Station, District- Kaimur
at Bhabua Respondents

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Appearance :

For the Petitioner : Mr. Parwej Khan, Adv.

For the Respondents : Mr. Anil Kumar Sinha, GA I

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL ORDER

4 31-07-2017

Heard the learned counsel for the petitioner.

The petitioner claims to be owner of the autorickshaw/tempo bearing registration no. UP-67T-5570. The said vehicle was seized by the police in connection with Durgawati P.S. Case No. 257 of 2016 for alleged violation of the excise laws. Subsequently, the vehicle was confiscated by order, dated 24.03.2017, passed by the Collector, Kaimur at Bhabhua, in Vehicle Confiscation Case No. 125 of 2016-2017. The said order of confiscation is under challenged in this writ application.

Submission of the learned counsel for the petitioner is that the issue as to whether the Executive Authority can exercise such power of confiscation which is exercisable only by a Judicial Authority is subjudice before a larger Bench of this Court L.P.A. No. 1647 of 2015 (**Baleshwar Roy Vrs. The State of Bihar & Ors.**).

It is submitted that till pendency of the aforesaid Letters Patent Appeal, the operation of the impugned order be



stayed and the vehicle be released by way of interim custody in favour of the petitioner as no useful purpose will be served in continued detention in police lock up.

No one appears on behalf of the respondents though two weeks' time was allowed, on prayer, to file counter affidavit.

Considering the fact that the issue whether the Collector is competent to confiscate the vehicle is under subjudice before a larger Bench of this Court in the aforesaid Letters Patent Appeal, hence, the operation of the impugned order requires to be stayed. The same would be subject to the result of the Letters Patent Appeal, aforesaid.

Let the referred tempo be released in favour of the petitioner on execution of surety bond of Rs.1,00,000/- (rupees one lakh) (not in the form of bank guarantee or cash) along with two sureties of the like amount each to the satisfaction of the Collector, Kaimur at Bhabhua.

With the aforesaid observations, this application stands **disposed off**.

(Birendra Kumar, J)

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