

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1785 of 2017

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Hemant Raj, Proprietor M/s Shri Dhanlakshmi Enterprises @ M/s Sri Dhanlakshmi Fertilizer, Mill Road, Nawada, Ara, son of Fulendra Singh, resident of Mohalla Maruti Nagar, P.S. – Ara Nagar (Town), District – Bhojpur.

.... Petitioner

Versus

1. The State of Bihar Through Principal Secretary, Department of Agriculture, Bihar, Patna
2. The District Magistrate, Bhojpur, Ara.
3. The Director of Agriculture, Patna, Bihar.
4. The District Agricultural Officer, Bhojpur at Ara

.... Respondents

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Appearance :

For the Petitioner/s : Mr. Rajeev Roy, Advocate
Mr. Makardhwaj Upadhyay, Advocate
For the Respondent/s : Mr. Sanjay Kumar (AC to SC-15)

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

5. 05-01-2018 Heard learned counsel for the petitioner and learned counsel representing the State.

The present application has been filed for release of the seized articles to the tune of Rs. 25 Mt (500 bags) of PPL DAP fertilizer seized on 07.08.2017 in favour of the petitioner's firm namely, M/s Sri Dhanlakshmi Enterprises.

The First Information Report as contained in Annexure-1 alleges that in course of raid on the godown of the Firm one truck loaded with Navratna DAP 25 MT fertilizers was being downloaded. No invoice of the fertilizers was produced.



Learned counsel for the petitioner submits that the petitioner is a dealer of fertilizer product and Annexure-2 is the copy of the invoice showing that a consignment of 50 MT DAP fertilizers was booked from Zuari Agro Chemicals Ltd. It is his case that when consignment was being downloaded in his godown the respondent seized the consignment. Learned counsel submits that the DAP is of huge cost as per invoice and it is perishable item which may be used only in the season and over the period it is likely to decay, therefore, an order for release may be passed.

On the other hand, learned counsel for the State submits that the DAP in question is subject to a confiscation proceeding before the Collector, Bhojpur at Ara. He, however, informs that DAP has not been disposed off under the order of the Collector, Bhojpur at Ara, even though an order to that effect was passed on 05.09.2017.

Learned counsel for the petitioner submits that in fact the confiscation proceeding itself is illegal and he has come to know about this only on receipt of a copy of the counter affidavit, prior to that he had no information about the confiscation proceeding. Therefore, he would be



challenging the same in appropriate application in accordance with law.

Be that as it may, considering the facts and circumstances as also the judgment of the Hon'ble Apex Court in the case of **Sunderbhai Ambalal Desai vs. State of Gujarat** reported in **2002 (10) SCC 283**, the case being L.P.A. No. 1647/2015 pending in this court where power of District Magistrate to initiate a confiscation proceeding is under challenge and the other orders passed by this Court in the matter of release.

I hereby direct the District Magistrate, Bhojpur at Ara to release the DAP in question in favour of the petitioner on production of the evidences such as invoice and/or consignment receipt of the 'DAP' in question in favour of the petitioner and the license showing him the dealer, within a period of one week, subject to other and further conditions that the petitioner will submit a surety bond in accordance with law to the extent of value of the DAP (not in form of Bank guarantee or cash) and two sureties of the like amount to the satisfaction of the District Magistrate, Bhojpur at Ara.

At the time of release a photograph and



panchnama of the DAP bags which will be released in favour of the petitioner be also prepared, and the petitioner shall give an undertaking that he will not question such photograph and panchnama in course of trial in the confiscation proceeding.

This application stands disposed off, accordingly.

(Rajeev Ranjan Prasad, J.)

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