

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.743 of 2022

Arising Out of PS. Case No.-242 Year-2022 Thana- DESARI District- Vaishali

Purushottam Kumar, S/o- Ramsharan Ray, Resident of Ward No. 12,
Shaikhopur, District - Vaishali, Bihar - 844509.

... .. Petitioner

Versus

1. The State of Bihar through the Principle Secretary, Food and Civil Supplies, Bihar, Patna.
2. The District Magistrate, Hajipur at Vaishali.
3. The Sub Divisional officer, Mahnar
4. The Block Supply officer, Desari, District - Hajipur at Vaishali Bihar
5. The Station House officer, Desari Police Station, District - Hajipur at Vaishali.

... .. Respondents

Appearance :

For the Petitioner/s	:	Mr. Mrigank Mauli, Sr. Advocate Mr.Prince Kumar Mishra, Advocate
For the Respondent/s	:	Mr.Bijoy Kumar Sinha, AC to AAG-5

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
CAV JUDGMENT

Date : 28-09-2022

This writ application has been filed seeking a direction to the respondent authorities to release the truck bearing no. DL-1GB-6447, (Tata Motors- LPT 1613/42 BS 3 EX CABIN), Chassis No. 373344ERZ119779, Engine No. 697TC55ERZ126507 which has been seized by the Block Supply Officer, Sahdae Bujurg along with the officials of Desari Police Station on the purported ground that the same was loaded with 351 bags of wheat (185.71 quintal) which is suspected to be subsidized government food grain (wheat) for which Desari P.S. Case No. 242 of 2022 dated 11.06.2022 has been registered



under Section 7 of the Essential Commodities Act (hereinafter referred to as the 'E.C. Act') and Sections 420, 120B/34 of the Indian Penal Code.

2. Learned Senior Counsel for the petitioner submits that on the basis of a written report of the Block Supply Officer, Desari (Vaishali) that government foodgrains are loaded on a truck bearing no. DL 1GB 6447 a raid was conducted with the assistance of police officers of Mahnar Police Station and Desari Police Station. It is alleged that on the truck 351 bags of wheat among which few were marked with logo of Bihar State Fertilizer Corporation weighing 185.71 quintals were seized. The wheat bags were handed over to the Assistant Godown Manager, Bihar State Fertilizer Corporation, Sahdae for safe storage. A case under Section 7 of the E.C. Act and Section 420, 120B/34 IPC has been lodged.

3. It is submitted that the truck of the petitioner was being used for transporting the wheat of one M/S Anisha Traders which has been purchased by Hajipur Roller Floor Mills. In this regard, the petitioner has brought on record the invoices issued by the seller M/s Anisha Traders which also bears the GST number of the purchaser of wheat as well as of seller of wheat. It is stated that M/s Anisha Traders is also



registered with GST and deals in purchase and sale of foodgrains including wheat and rice.

4. Learned Senior Counsel for the petitioner submits that for release of the foodgrains M/s Anisha Traders had moved this Court in Cr.W.J.C. No. 697 of 2022 which has been allowed by this Court vide judgment dated 07.07.2022. It is submitted that in the present case also the petitioner is ready to abide by the terms and conditions on which the release may be ordered.

5. Learned Senior Counsel for the petitioner relies upon a judgment of the Hon'ble Supreme Court in the case of **Sunderbhai Ambalal Desai Vs. The State of Gujarat** reported in **(2002) 10 SCC 283** to submit that the ratio of the said judgment would equally apply in the facts of the present case where truck in question is standing under open sky in uncared condition for last about two months and is losing its road worthiness every day.

6. Learned Senior Counsel has pointed out to the extent that this Court on many occasions has come across the cases where the vehicles lying on the roadside near the police station has been subjected to theft of its valuable parts and at times it becomes difficult to run the vehicle. Learned Senior



Counsel has further submitted that even though in this case it has been brought to the notice of this Court that a confiscation proceeding has been initiated but on a bare perusal of Annexure 'C' to the counter affidavit, it would appear that the entire exercise has been done in haste. It is pointed out that the raid in question has been conducted on 06.06.2022 but the FIR has been lodged after five days on 11.06.2022.

7. From Annexure 'C' to the counter affidavit, it would appear that immediately after lodging of the FIR the Sub-Divisional Officer, Mahnar vide his letter no. 1394 dated 16.06.2022 submitted a report to the Additional Collector, Vaishali (hereinafter referred to as the 'ADM') to pass an order under Section 6-A of the E.C. Act for confiscation of the truck in question. Based on the said report immediately after two days the ADM, Vaishali passed the order dated 18.06.2022. The whole basis of the report of the Sub-Divisional Officer and the subsequent initiation of action under Section 6-A of the E.C. Act is the allegation that the articles loaded on the truck were the government subsidized wheat which were kept in bags having logo of the Bihar State Fertilizer Corporation.

8. It is his submission that the manner in which the confiscation proceeding has been initiated even without waiting



for prima-facie materials to be collected by the investigating agency to satisfy the authorities that the wheat kept on the truck were the government subsidized rice, would show that the authorities such as Sub-Divisional Officer and ADM were not acting judiciously, they were in haste and had pre-occupied mind wherein they went for initiating a confiscation proceeding.

9. Learned Senior Counsel submits that it is a case where gross injustice has been caused to the petitioner. After all, according to him, a fair investigation of the case has been recognized as a fundamental right of a citizen and in such cases where it is alleged that the foodgrains is a government subsidized foodgrains, the competent authority under Section 6-A of the E.C. Act must have some prima-facie materials on the record to satisfy that it is a fit case for initiation of a confiscation proceeding or passing of an order of confiscation otherwise in the garb of exercise of power under Section 6-A of the E.C. Act, the truck in question may be subjected to confiscation and sale even as the investigation has not progressed.

10. Learned Senior Counsel, therefore, submits that it is one of those cases in which this Court should exercise its extraordinary writ jurisdiction to direct release of the vehicle in



question under such terms and conditions as may be imposed by this Court.

11. On behalf of the State, a counter affidavit has been filed by the Block Supply Officer, Sahdae Bujurg, Vaishali. It is stated therein that after lodging of Desari P.S. Case No.242 of 2022, the Block Supply Officer Sehdae Bujurg vide letter no. 79 dated 15.06.2022 forwarded a report to the Sub-Divisional Officer, Mahnar with recommendation to forward the seized truck bearing registration no. DL-1GB- 6447 and foodgrains for confiscation before the Collector, Vaishali. On 16.06.2022, vide letter no. 1394 the Sub-Divisional Officer, Mahnar made communication to the Additional Collector, Vaishali to pass an order under Section 6-A of the E.C. Act and accordingly a confiscation case bearing no. 02 of 2022-23 has been instituted under Sections 6-A of the E.C. Act and vide order contained in Memo No. 406 dated 18.06.2022 a show cause notice has been issued to the petitioner.

12. Reliance has been placed on the judgment of the learned Co-ordinate Bench of this Court passed in CWJC No. 4479 of 2020 (Md. Jahangir vs. the State of Bihar) to submit that in a similar matter the learned Co-ordinate Bench of this Court dismissed the writ petition seeking release of the



foodgrains. The respondents have placed on record a photocopy of Memo No. 406 dated 18.06.2022 as Annexure 'C' to the counter affidavit.

Consideration

13. Having heard learned Senior counsel for the petitioner and learned counsel for the State, this Court finds that in this case the foodgrains which were found loaded on the truck have already been ordered to be released. In paragraph '13' of the order passed by this Court it is recorded that the State had no objection in release of the foodgrains if the petitioner was ready to provide adequate security/surety and to abide by the reasonable terms and conditions. The foodgrains were also subjected to confiscation proceeding. Taking note of the submission of learned counsel for the State, this Court has directed for release of the foodgrains and the same has been released.

14. In the present case, however, a stand has been taken citing the judgment of the learned co-ordinate Bench of this Court in which in the given facts and circumstances of the said case, the learned co-ordinate Bench refused to direct release of the foodgrains during pendency of the confiscation proceeding.



15. This Court has gone through the judgment of the learned co-ordinate Bench. In paragraph '25' thereof it is recorded as under:-

“In the instant case, the petitioner has failed to demonstrate that the procedure prescribed in law has been flouted in the search and seizure of the wheat bags or that no notice was issued to him in the confiscation proceeding or that any substantial injustice has been caused to him or that any exceptional case is made out for the release of wheat bags during pendency of the confiscation proceeding.”

16. So far as the present case is concerned, this Court has already noticed hereinabove that as regards the release of foodgrains learned counsel for the State took a plea that he would have no objection if the foodgrains be ordered to be released on the petitioner's providing adequate security/surety and abide by the reasonable terms and conditions. If this was the stand of the State in relation to the release of the foodgrains, this Court finds no reason as to why a different stand would be taken as regards release of the truck in question.

17. Despite the aforesaid position, this Court would briefly record that even otherwise this Court finds that it is a fit case in which this Court must held that a judicial interdict would be required otherwise gross injustice would be done to the petitioner. The petitioner is owner of the truck on which wheat were loaded. He has produced undisputed documents such as



permit in respect of the goods issued by the State/Regional Transport Authority, Patna on 27.03.2019. It is valid up to 26th March, 2024. It is a good carrier and is engaged in goods service. Annexure-P/3 is the bill of supply giving the details of supplier and buyers namely M/s Anisha Traders and Hajipur Roller Floor Mills. It is invoice no. 210 dated 06.06.2022. These documents are not in dispute.

18. After seizure of the truck on 06.06.2022, no FIR was lodged. Five days thereafter FIR was lodged. No reason has been assigned at least in the FIR to explain the delay of 5 days in lodging of the FIR. For the present, this Court is only briefly indicating this aspect for taking a cumulative view of the entire matter. Four days after lodging of the FIR, the Block Supply Officer submits a report to the Sub-Divisional Officer, Mahnar (Annexure 'A' to the counter affidavit) in which he simply reiterates the allegations, the fact that an FIR has been lodged and then he recommends for taking steps for initiation of a confiscation proceeding by the ADM, Vaishali. The report of the Block Supply Officer reaches to the office of SDM, Mahnar and without losing any time he writes letter no.1394 dated 16.06.2022 to the ADM, Vaishali wherein he recommends to ADM, Vaishali for confiscation of the vehicle as well as the foodgrains. Letter No. 1394 dated 16.06.2022 written by the Sub-Divisional Officer,



Manhar no where mentions any material in support of the allegations.

19. Acting in a routine and mechanical manner, the ADM, Vaishali proceeds to pass an order dated 18.06.2022 (Annexure 'C' to the counter affidavit) by which he grants permission to proceed under Section 6-A of the E.C. Act and directs issuance of show cause notice to the petitioner calling upon him to show cause as to why appropriate action be not taken against him for black-marketing of the government subsidized articles. In the same stroke of pen, he orders for sale of rice and wheat and deposit the amount received from the same in the government treasury.

20. A careful perusal of the order dated 18.06.2017 passed ADM, Vaishali would show that he has not at all applied his judicious mind. The show cause notice has been ordered to be issued against the petitioner and others calling upon them to show cause as to why action be not initiated against them for black-marketing of the government subsidized articles. So far as this petitioner is concerned, he is the owner of the truck in question and there is no allegation against him that he was found black-marketing the government subsidized articles. The articles were simply found loaded on the truck when those were seized. The show cause notice is not for calling upon the petitioner to show



cause as to why the truck in question be not confiscated. All these discrepancies have resulted only because the authorities right from the Block Supply Officer up to the ADM, Vaishali were acting in hot haste. They had no patience to wait for investigation or to go through even the prima-facie materials which might have been collected in course of investigation.

21. In the given facts and circumstances, this Court finds that the respondent authorities have not only violated the principle of fair play in action but by their action in hot haste they have inflicted gross injustice upon the petitioner. In the case of **Sunderbhai Ambalal Desai** (supra) as regards release of the seized vehicles, the Hon'ble Supreme Court has categorically observed that whatever be the situation, it is of no use to keep such seized vehicles at the police station for a long period and it is for the magistrate to pass an appropriate order immediately by taking appropriate bond and guarantee as well as security for return of the said vehicle, if required at any point of time. This can be done pending hearing of applications for return of such vehicles.

22. In the present case, this Court finds that the vehicle in question is lying in police station, for more than 3 months and there is much substance in the submission of learned Senior Counsel for the petitioner that with every passing day, the vehicle is exposed to theft of its valuable parts and is losing its road



worthiness. There is no reason as to why this Court, in the facts of the present case should not exercise its discretion by directing the respondent nos. 2 and 3 to release the vehicles in question subject to suitable conditions.

23. In the case of **Baleshwar Roy and Anr. Vs. The State of Bihar** reported in **2018(4) PLJR 970**, the Hon'ble Full Bench of this Court has in paragraph '62' held that the powers of High Court under Articles 226 and 227 of the Constitution of India cannot be curtailed under any circumstance, as the power flows from the Constitution itself. In paragraphs '63' and '64' of the said judgment the Hon'ble Full Bench put a word of caution on the High Court exercising its power under Article 226 and 227 of the Constitution of India. This Court would reproduce paragraphs '63' and '64' as under:-

“**63.** Despite such wide and untrammelled powers, without any circumscription by external restrictions, the Courts have evolved certain self-imposed limits while exercising these powers. The High Courts, normally, would not go beyond justified inhibitions under any Statue except where there is a complete jettisoning of rule of law or under exceptional circumstances which demand timely judicial interdict. This inhibition is basically ordained, keeping in mind that there is a national weal behind any valid piece of Legislation



incorporating and inhering in itself the social objective behind any Legislation. Though, no limitations or fetters have been put on the powers of the High Court under Articles 226 and 227 of the Constitution of India, as the High Courts perform as *sentinel on the qui-vive*, but such power is not to be exercised casually and without coming to the conclusion that non-exercise of such power would lead to positive injustice. Times without number, it has been held by the High Courts that only under condition of a person establishing that substantial injustice has or is likely to ensue, such extraordinary powers can be exercised. It needs no adumbration by this date that the plenary powers of the High Court have only to be exercised in the interest of justice.

64. Thus, an order of release may be passed under Article 226/227 of the Constitution of India, even pending confiscation proceedings, but only when it is established before the Court that the procedure prescribed and the law in that regard has been completely flouted and that there is complete violation of the procedure prescribed for confiscation, viz., notice to the offender before confiscation, allowing him opportunity of giving written representation and affording hearing on the issue to him and that such injustice cannot be remedied without the exercise of the extraordinary power.”



24. Keeping in mind the judgment of the Hon'ble Full Bench when this Court applies the ratio of the said judgment in the facts of the present case, the judicial conscience of this Court would come to a conclusion that non-exercise of the extraordinary power of this Court in this case would definitely lead to injustice to the petitioner. The respondent authorities who have been conferred with power of search and seizure and then to initiate a proceeding and pass order under Section 6-A of the E.C. Act cannot be allowed to act so casually and keep a vehicle in seized condition in the name of pendency of a confiscation proceeding. This Court has already indicated how the authorities have acted in haste.

25. In result, this writ application is allowed.

26. This Court directs the respondent authorities to get the valuation of the truck in question done by the District Transport Officer within a period of one week from the date of communication of this order and release the vehicle in question on the petitioner furnishing a security bond/surety bond (not in cash or in form of bank guarantee) to the extent of the value of the vehicle in question with an undertaking that (i) as and when required he will produce the vehicle in question before the competent authority/the court, as the case may be; (ii) that he will not deal with the vehicle in question in any form or manner so as



to create any encumbrance on the same or third party right; and
(iii) that a panchnama of the vehicle in question shall be prepared in presence of two witnesses and the same will be kept on the record which shall not be questioned by the petitioner in course of the proceeding/trial as the case may be.

27. If so advised, it will be open for the Block Supply Officer, the Sub-Divisional Officer and the District Magistrate concerned to take a fresh view of the matter based on the materials which may have been collected in course of investigation and recommend/pass a fresh order under Section 6-A of E.C. Act after giving adequate opportunity of hearing to the petitioner.

28. This application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

arvind/-

AFR/NAFR	
CAV DATE	29.08.2022
Uploading Date	28.09.2022
Transmission Date	28.09.2022

Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

