

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1494 of 2022

Arising Out of PS. Case No.-88 Year-2022 Thana- AMARPUR District- Banka

Rajesh Kumar Saha, Son Of Late Ram Bilash Saha, R/O Amarpur, Ward No.9, P.S.- Amarpur, District- Banka

... .. Petitioner/s

Versus

1. The State Of Bihar Through District Magistrate, Banka Bihar
2. The Sub Divisional Officer, Banka Bihar
3. The Block Supply Officer, Amarpur, Banka Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Vishwajeet Kumar Mishra, Advocate
		Mr. Akash Choudhary, Advocate
For the Respondent/s	:	Mr. Upendra Pratap Singh, AC to SC-IV

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

5 15-01-2024 Learned counsel for the petitioner submits, at the outset, that in the F.I.R. the registration number of 15 vehicles are mentioned and this application has been filed seeking release of all the 15 vehicles, however, in paragraph ‘1’ of the writ application inadvertently the registration number of one of the vehicles has not been mentioned which may be allowed to be mentioned.

2. Learned counsel for the State has no objection to the same.

3. This Court permits learned counsel for the petitioner to add the registration number of the vehicle which is left to mention in paragraph ‘1’.

4. Heard learned counsel for the petitioner and Mr. Upendra Pratap Singh, learned AC to SC-IV for the State.

5. By filing this writ application, the petitioner is seeking release of the vehicles which have been seized loaded with LPG filled cylinders in connection with Amarpur P.S. Case No.88 of 2022. As per the F.I.R. lodged by the Block Supply Officer, Amarpur, Banka, the vehicles were found loaded with LPG cylinders and it appeared that the LPG cylinders were being transported for black-marketing.

6. It is submitted that the vehicles were seized as back as on 11.02.2022 and those are lying outside the police station unattended and in such a condition that they are losing their road worthiness each and every day.

7. Learned counsel submits that the vehicles which have been seized and of which release has been prayed for are registered in the name of the petitioner or of the gas agency of the petitioner. There was no allegation that the petitioner was involved in black-marketing of the gas cylinders. There is also no mismatch between the stock register and the physical stock of the petitioner.

8. Learned counsel submits that the Indian Oil Corporation has not found any illegality and has been continued

with its business with the petitioner and is still supplying cylinders to the petitioner.

9. Learned counsel submits that the case of the petitioner would be covered by a judgment of this Court rendered in the case of **M/s Ganpati Traders Vs. State of Bihar & Ors.** reported in **2022 (6) BLJ 161**.

10. Earlier when the matter was taken up for consideration, this Court granted time to the State to file counter affidavit. No counter affidavit has been filed on behalf of the State in opposition despite the fact that the writ application has remained pending after allowing time to the State on 29.08.2023.

11. Today, Mr. Upendra Pratap Singh, learned AC to SC-4 for the State has taken a stand that the case of the petitioner would be fully covered by the judgment of this Court in the case of **M/s Ganpati Traders** (supra), therefore, it may be disposed of in similar terms.

12. Having regard to the facts and circumstances of the case and the stand taken on behalf of the State, this Court is disposing of the present writ application in terms of the judgment of this Court in the case of **M/s Ganpati Traders** (supra). Paragraphs 19, 20 and 21 from the judgment of **M/s**

Ganpati Traders (supra) are being quoted hereunder for a ready reference:-

“19. In the case of Baleshwar Roy (supra), the Hon’ble Full Bench has held in paragraph ‘62’ that the powers of the High Court under Article 226 and 227 of the Constitution of India cannot be curtailed under any circumstance, as the power flows from the Constitution itself and no statutory bar can affect this power. Therefore, an order of release may be passed under Article 226 of the Constitution, even pending confiscation proceedings, but only when it is established before the Court that the procedures prescribed and the law in that regard has been completely flouted and that there is complete violation of the procedure prescribed for confiscation.

20. In the facts of the present case, this Court finds that the confiscation proceeding has been initiated in haste and without there being any prima-facie materials available before the confiscating authority to pass an order under Section 6-A of the E.C. Act. Same is the position with regard to order for sale.

21. At the time of hearing of this case, learned counsel for the State was not even in a position to inform as to whether the investigating agency had collected any material to suggest prima-facie that the seized wheat are the government subsidized wheat.”

13. In this case as well, this Court finds that the State is not even in a position to say whether the investigating agency has collected any material to suggest that prima-facie the vehicles were involved in transportation of the government subsidized LPG for black-marketing.

14. Accordingly, this writ application is allowed. The respondents are directed to release the vehicles in favour of the

petitioner on showing the documents of ownership subject to the conditions that the petitioner shall make available adequate and sufficient security/surety (not in cash or bank guarantee), to the satisfaction of the District Magistrate, Banka to the extent of the value of the vehicles which may be assessed within one week from today. The petitioner shall also further furnish an undertaking to abide by any other reasonable condition(s) which may be imposed for purpose of future proceedings.

15. The petitioner through his counsel undertakes that if the vehicles are released in his favour, in course of trial or a confiscation proceeding, if any, he shall not raise any question with respect to the seizure of the vehicles and the identity of the vehicles shall not be disputed.

16. With the aforesaid directions and observations, this writ application is allowed.

(Rajeev Ranjan Prasad, J)

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