

Court No. - 91

Case :- APPLICATION U/S 482 No. - 32462 of 2023

Applicant :- Raju Jaiswal

Opposite Party :- State of U.P. and Another

Counsel for Applicant :- Satya Prakash Shukla

Counsel for Opposite Party :- G.A.

Hon'ble Gajendra Kumar,J.

1. Heard learned counsel for the applicant and learned counsel for the State.

2. The instant application has been filed seeking quashing of the impugned order dated 04-08-2023 passed by the learned Additional District and Sessions Judge/ Special Judge E.C. Act, Court No.4, Mirzapur (Raju Kumar Vs. State) in Criminal Case No. 379 of 2023, arising out of Case Crime No. 100 of 2023, under Section 8/20 of N.D.P.S. Act, P.S. Ahraura, District Mirzapur, pending in the court of Additional District and Sessions Judge/ Special Judge E.C. Act, Court No.4, Mirzapur and further prayer to direct the court concerned to release the vehicle, money of Rs.22,670/- and Mobile phone has been made.

3. Learned counsel for the applicant submits that in the instant case along with the contraband material as per the NDPS Act, one Motor Cycle without number whose Chasis number is MD 637 WT1XM2G 01898 was seized. In the F.I.R., it has been stated that the aforesaid vehicle is seized under Section 207 of the Motor Vehicles Act and the money and mobile were also seized. Learned counsel for the applicant further submits that since the vehicle, money and mobile were seized in pursuance of the F.I.R. being Case Crime No. 100 of 2023, under Section 8/20 of N.D.P.S. Act,

the applicant has approached for release of the aforesaid before the learned Additional District and Sessions Judge/ Special Judge E.C. Act, Court No.4, Mirzapur and the learned Additional District and Sessions Judge/ Special Judge E.C. Act, Court No.4, Mirzapur vide impugned order dated 04-08-2023 has rejected the application for release of the vehicle and said articles on the ground that the application was premature. Learned counsel further submitted that property seized under NDPS Act can be released by the Magistrate or court, there is no prohibition/ bar regarding the release of the same by invoking the provisions under section 451 and 457 Cr.P.C. Therefore, the applicant has approached this Court to quash the impugned order and for a direction to the competent court to release the impugned vehicle, money of Rs.22,670/- and mobile phone. Applicant has placed reliance over the judgment of Hon'ble The Apex Court in the case of **Sunderbhai Ambalal Desai Vs. State of Gujarat, 2002 (10) SCC 283.**

4. It is argued that the impugned order is illegal and liable to be set aside. It is further argued that the articles in question were seized without following the procedure prescribed under law. It is further argued that the articles in question is not involved in any criminal activity.

5. In view of the aforesaid, it is argued that the order impugned be set aside and the articles of the applicant be directed to release.

6. On the other hand, it is argued by the learned AGA that since the vehicle, money in question was obtained by malpractice and since regarding mobile evidence is to be collected, the application for release was rightly rejected by the Court.

7. From perusal of the record, it transpires that vehicle and articles

of the applicant were seized in view of the fact that contraband articles were being transported with a malice intention. The criminal proceedings in this regard is still going on. It is settled law that there is no use to keep seized vehicles or articles at the police station for a long period. Police authorities are to return the articles after taking appropriate bond and guarantees as well as security for the return of the vehicle. The Supreme Court in the case of **Sunder Bhai Amba Lal Desai vs. State of Gujarat reported in 2002 (10) SCC 283** has held that it is of no use to keep such seized vehicle at the police stations for a long period. Paragraph 17 of the aforesaid judgment is reproduced below:-

"17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It is for the Magistrate to pass appropriate orders immediately by taking appropriate bond and guarantee as well as security for return of the said vehicles, if required at any point of time. This can be done pending hearing of applications for return of such vehicles."

8. From perusal of the impugned order, it is apparent that the learned Additional Sessions Judge has rejected the application of the applicant vide order dated 4.8.2023 observing that the vehicle could not be released during investigation and money has been obtained by illicit practice and regarding mobile evidence has to be collected. The ground on which the application has been rejected are not good in the eyes of law as no purpose is going on to be served by keeping the property in police custody or otherwise. While passing the impugned order, the learned Court has not considered the mandate of the Apex Court laid down in **Sunder Bhai Amba Lal Desai (supra)** regarding the release of seized articles.

9. Thus, the order impugned dated 04.08.2023 is hereby set-aside. The matter is remanded back to the trial court concerned to decide the matter afresh in accordance with law, within a period of two

months from the date of production of certified copy of this order.

10. With the aforesaid observations, the application stands **disposed of.**

Order Date :- 9.11.2023

Shiv