

Court No. - 89

Case :- APPLICATION U/S 482 No. - 39733 of 2023

Applicant :- Babar

Opposite Party :- State Of U.P. And 3 Others

Counsel for Applicant :- Mithilesh Kumar Gupta, Anju Pandey

Counsel for Opposite Party :- G.A.

Hon'ble Deepak Verma, J.

1. Heard Sri Mithilesh Kumar Gupta, learned counsel for the applicant and learned A.G.A. for the State.

2. The present 482 Cr.P.C. application has been filed to quash the impugned order dated 13.10.2022 in Case No.D202214180000232, under Section 5(A) of UP Prevention of Cow Slaughter Act, 1955, arising out of Case Crime No.322 of 2021 and Section 3/5A/8 of UP Prevention of Cow Slaughter Act and Section 11 of Prevention of Cruelty to Animals Act, 1960 and Section 429 I.P.C., Police Station- Ali Nagar, District-Chandauli further to direct the O.P. No.2 and 3 to release the Vehicle TATA truck No.UP 61 T 1641 in favour of the applicant.

3. Learned counsel for the applicant submitted that applicant is owner of the vehicle in dispute bearing No.UP 61 T 1641 which was seized under the aforesaid case crime. The aforesaid vehicle was engaged in transportation of cow progeny. On search, 15 cow progeny were recovered from the alleged vehicle. He further submitted that vide order dated 08.03.2022 learned Magistrate issued notice to show cause why your vehicle would not be seized, thereafter applicant moved revision before Revisional Court, the Revisional Court vide order dated 30.09.2022 allowed the revision of the applicant. District Magistrate, Chandauli without considering the observation made by Revisional Court, in arbitrary manner rejected the application of the applicant vide order dated 13.10.2022, hence, the present application has been filed challenging the order dated 13.10.2022. Applicant's vehicle is standing in the police station in an open area without any protection which may lead to deteriorate the condition of the vehicle. The applicant is owner of the vehicle. 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 vehicle in question was seized without following the procedure prescribed in law. It is further argued that the vehicle 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

vehicle of the applicant be directed to release.

6. On the other hand it is argued by the learned AGA that since the vehicle in question was involved in malpractice and since cow progeny were found in the aforesaid vehicle, the same was rightly confiscated by the District Magistrate.

7. From perusal of the record it transpires that vehicle of the applicant was seized in view of the fact that cow progeny 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 at the police station for the long period. Police authorities are to returned the vehicle 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. In this view of the matter, the Court is of the opinion that there is no use to keep the seized vehicle of the applicant at the police station.

9. In the facts and circumstances of the case, the present application is **allowed** and the impugned order dated 13.10.2022 is set aside and the case is remitted back to the District Magistrate, Chandauli and permitting the applicant to move an application in this regard before the District Magistrate, Chandauli and if such application is filed along with the certified copy of this order before the District Magistrate, Chandauli, the District Magistrate, Chandauli is directed to pass an appropriate order on the same, most expeditiously and positively within a period of two months from the date of presentation of application along with certified copy of this order before him.

10. It is made clear that the District Magistrate, Chandauli will pass order taking into consideration the observations made by the Hon'ble Apex Court in the case of *Sunder Bhai Amba Lal Desai* (Supra) as well as the facts as narrated above in the present application.

Order Date :- 30.10.2023

Nitin Verma