

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Criminal Miscellaneous No.43542 of 2015**

Arising Out of PS.Case No. -297 Year- 2014 Thana -JAHANABAD District- JEHANABAD

Santosh Kumar, Son of Wakil Prasad Sharma, Resident of Village-Nadauna, Police Station-Bhagwanganj, District -Patna.

.... .... Petitioner

Versus

The State of Bihar

.... .... Opposite Party

**Appearance :**

For the Petitioner/s : Mr. Shivendra Prasad, Advocate  
Mr. Binod Kumar, Advocate

For the Opposite Party/s : Mr. Jharkhandi Upadhyay, APP

**CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH**

**ORAL JUDGMENT**

**Date: 05-08-2016**

By way of the present application preferred under Section 482 of the Code of Criminal Procedure (For short 'CrPC'), the petitioner has challenged the order dated 08.04.2015 passed by the learned Chief Judicial Magistrate, Jehanabad in Jehanabad P.S. Case No. 297 of 2014 whereby he has rejected the petition filed by the petitioner for release of his motorcycle bearing registration No. BR-01BT-6902 mainly on the ground that the motorcycle in question was used by the accused of the case in commission of the crime.

Apparently, the order impugned is contrary to the ambit and scope of Section 451 of the CrPC as also in teeth of the decisions of the Supreme Court in **Smt. Basava Kom Dyamogouda Patil vs. State of Mysore & Ors. [(1977) 4 SCC**

**358]; Sunderbhai Ambalal Desai vs. State of Gujarat [(2002) 10 SCC 283]; Sunderbhai Ambalal Desai vs. State of Gujarat [(2002)10 SCC 290] and General Insurance Council & Ors. vs. State of Andhra Pradesh & Ors. [(2010) 6 SCC 768],** which have been noticed by this Court in its order dated 09.10.2015 passed in Cr. Misc. No. 28321 of 2015, since reported in 2016(1) PLJR 556.

In view of the patent illegality in the order, the same cannot be sustained. Accordingly, the impugned order dated 08.04.2015 is set aside.

The learned Chief Judicial Magistrate, Jehanabad is directed to hear the matter afresh and pass order after taking into consideration the facts of the case, law involved therein and the submissions advanced by the petitioner keeping in mind the law laid down by the Supreme Court in the cases noted hereinabove, expeditiously, preferably within four weeks from the date of receipt/production of a copy of this order.

With these observations and directions, the application is disposed of.

**(Ashwani Kumar Singh, J.)**

Sanjeet/-

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