

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.28176 of 2013

Arising Out of PS.Case No. -64 Year- 2011 Thana -RAGHOPUR District- VAISHALI(HAJIPUR)

Jai Ram Ray son of Musafir Ray, resident of village - Mohanpur (Mirampur), P.S.-
Raghopur, O.P. Rustampur, District Vaishali.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Upendra Kumar, Advocate

For the Opposite Party/s : Mr. Ram Sumiran Rai, APP

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 08-08-2016

By way of the present application preferred under Section 482 of the Code of Criminal Procedure (for short 'CrPC'), the petitioner seeks quashing of the order dated 16.1.2013 passed by learned District and Sessions, Vaishali at Hajipur in connection with Raghopur (O.P. Rustampur) P.S. Case No.64 of 2011 registered under Sections 20 and 22 of the Narcotic Drugs and Psychotropic Substances Act (for short 'NDPS Act'), which is pending in the court of Additional District and Sessions Judge-1, Vaishali at Hajipur.

2. It is contended that in connection with the aforesaid case registered under the NDPS Act a Hero Honda Motorcycle bearing registration no.BR-1AL-7512 of the petitioner has been seized. The petitioner, after release on bail, filed an application for release of the motorcycle in question. In this regard, pursuant to court's order, the



police submitted its report dated 9.12.2012 wherein it was stated that the police have no objection, if the motorcycle is released in favour of the petitioner. It is further contended that despite receiving such police report, the learned District and Sessions, Vaishali at Hajipur has rejected the application filed under Section 451 of the CrPC only on the ground that the vehicle allegedly used in carriage of contraband goods is liable to confiscation. It is submitted that till date confiscation proceeding has not been initiated and if the motorcycle is not released, the same would turn into junk, as it is lying in open space in the police station.

3. Learned counsel for the State has opposed the application. He has submitted that the motorcycle, in question, was seized in a serious offence under the NDPS Act and it may be required during trial as material exhibit.

4. Heard the parties and perused the record. In my opinion, the court below has not appreciated the fact and law involved in the case in correct perspective. It has not even considered the ambit and scope of Section 451 of the CrPC. Furthermore, the impugned order has been passed in contravention to the ratio laid down by the Supreme Court in its decisions in **Smt. Basava Kom Dyamogouda Patil vs. State of Mysore and Another** [(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 and Ors. vs. State of Andhara Pradesh and Ors. [(2010)6 SCC 768]**.

5. In that view of the matter, the impugned order dated 16.1.2013 passed by the learned District and Sessions, Vaishali at Hajipur, can not be sustained. It is set aside, accordingly. The matter is remanded to the court below to hear the parties afresh and pass order in accordance with law taking into consideration the ratio laid down in the aforesaid decisions of the Supreme Court, which have also been noticed by this Court in its judgment dated 9.10.2015 passed in the matter of **Shyam Lohia and Anr. vs. The State of Bihar** since reported in *[2016(1) PLJR 556]*. The court below is directed to dispose of the matter expeditiously, preferably within two months from the date of receipt of a copy of this order.

6. Let a copy of the order be communicated to the learned District and Sessions, Vaishali at Hajipur forthwith for the needful.

(Ashwani Kumar Singh, J)

Md.S./-

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	
Transmission Date	