

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL MISC. PETITION NO. 106 OF 2016

Raghav Chandrakar, son of Shri Krishna Chandrakar, aged about 32 years, resident of Beejbhantha, Police Station Kunda, Tehsil Pandariya, District Kabirdham (CG) Civil and Revenue District Kabirdham (CG).

... Petitioner

Versus

State of Chhattisgarh, through the Collector, District Kabirdham (C.G.)

... Respondent

For Petitioner	:	Shri Dinesh Tiwari, Advocate.
For Respondent-State	:	Ms. Smita Ghai, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

13/05/2016

1. The present petition under Section 482 of CrPC has been filed seeking for releasing of seized motorcycle bearing Registration No. CG09-J/3598, on Supurdnama.
2. Brief facts of the case are that the above seized vehicle was found to be involved in illegally carrying/transporting kerosene oil. The said vehicle was seized by the Police Station, Kunda, on 14.07.2015 and since then it is in the custody of the said Police Station in connection with crime registered under Sections 3 & 7 of the Essential Commodities Act. An application was moved by the Petitioner under Section 451 of CrPC for releasing of the seized vehicle on Supurdnama which was rejected by the Judicial Magistrate First Class, Pandariya vide order dated 29.10.2015 in Criminal Case No. 374 of 2015. The said order dated 29.10.2015 was challenged by the Petitioner before the Additional Sessions Judge Kabirdham which was affirmed vide impugned order dated 27.11.2015 passed by the Additional Sessions Judge Kabirdham in Criminal Revision

No. 48 of 2015, leading to the filing of the present petition under Section 482 of CrPC.

3. Learned Counsel for the Petitioner submits that the Petitioner is a registered owner of the seized vehicle. He further submits that since the vehicle is lying idle from 14.07.2015 no fruitful purpose would be served if the vehicle remains idle in the custody of the police personnels exposed to the extreme weather conditions. The vehicle would get decayed day by day and would further deteriorate by passage of time to the extent that it would become unusable after some time and therefore in the interest of justice the vehicle may be released to the Petitioner. He further undertakes to give any sort of conditions required till the finalization of the criminal case or for that matter any other proceedings initiated by the authorities.

4. Counsel for the Petitioner has relied upon the judgment passed by the Supreme Court in the case of **Sunderbhai Ambalal Desai Vs. State of Gujrat**, reported in **2002 (10) SCC 283**, wherein in paragraphs 7 and 17 the Supreme Court has categorically enumerated the guidelines for releasing of the vehicle seized by the police.

5. Counsel for the State opposes the claim of the Petitioner submitting that the nature of offence said to have been committed in which the seized vehicle is involved is quite serious in nature and that the impugned order rejecting the Petitioner's application for release of the seized vehicle on Supurdnama does not warrant any interference by this Court as the reasons assigned for rejecting the application are just and proper.

6. The Supreme Court in paragraphs 7 and 17 of *Sunderbhai* case (supra) has laid down the guiding principles for releasing the vehicle seized by police. For ready reference the relevant portion is reproduced below:-

“7. In our view, the powers under Section 451 CrPC should be exercised expeditiously and judiciously. It would serve various purposes, namely:

1. owner of the article would not suffer because of its remaining unused or by its misappropriation;
2. court or the police would not be required to keep the article in safe custody;
3. if the proper panchnama before handing over possession of the article is prepared, that can be used in evidence instead of its production before the court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and
4. this jurisdiction of the court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.”

XXX

XXX

XXX

17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the polices 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.”

7. Similar stand has also been taken by the Supreme Court recently in the case of **Multani Hanifbhai Kalubhai Vs. State of Gujrat & Another**, reported in **2013 (3) SCC 240**, wherein the Supreme Court has expressed that it is not advisable to keep the seized vehicle in the police station in open condition which is prone to natural decay on account of weather conditions for a long period.

8. In the instant case, trial is going on and confiscation proceeding is yet to be initiated by the competent authority and therefore no useful purpose would be served if the vehicle is allowed to get exposed in the extreme weather conditions at the police station. On the contrary, if the vehicle can be released to the Petitioner subject to certain conditions he can use it so that the vehicle does not become junk after some time.

9. For the foregoing reasons, it is directed that the seized vehicle belonging to the Petitioner, i.e., motorcycle, bearing Registration No.

CG09-J/3598, be released to the Petitioner upon his furnishing an appropriate bond and guarantee to the satisfaction of the Court below for return of the said vehicle, if required at any point of time. In the bond he shall give an undertaking that he shall not change the ownership of the vehicle nor shall he change the colour of the vehicle neither shall he create a third party right or interest over the said vehicle. He shall also undertake that he shall produce the vehicle as and when required by the prosecution during the course of investigation, trial and even at the appellate stage. He shall further undertake to produce the vehicle to any competent authority under different statutes as and when required. So far as surety is concerned, it shall be equal to the present day value of the vehicle seized to the satisfaction of the concerned Trial Court.

10. With the aforesaid observations, the Criminal Misc. Petition is allowed.

Sd/-
(P. Sam Koshy)
JUDGE