

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 281 of 2016

Chandrashekhhar Yadav S/o Hurdanand Yadav Aged About 38 Years R/o Vill. Saria - Thana Tah. - Saria, Rev. And Civil Distt. Raigarh Chhattisgarh.

---- Appellant

Versus

State Of Chhattisgarh Through Police Station Gharghoda Distt. Raigarh Chhattisgarh.

... Respondent

For Appellant	:	Mr. Varun Sharma, Advocate.
For Respondent-State	:	Mr. Vaibhav A. Goverdhan, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

12/07/2016

1. The present Appeal under Section 454 of CrPC has been filed seeking for release of seized vehicle Bolero bearing Registration No. C.G. 13 C-0702 on Supurdnama.
2. Brief fact of the case is that the above seized vehicle was found to be involved in carrying 129 Kg. of cannabis. The said vehicle was seized by the Police Station, Gharghoda on 10.02.2013 and since then it is in the custody of the said Police Station in connection with Crime No. 54/2013 registered under Sections 20(B)(2)(C) and 22 of Narcotic Drugs and Psychotropic Substances Act, 1985. Thereafter, charge sheet was filed and the case was put to trial vide Special Case No. 1/2013. After, conclusion of the trial vide the judgment dated 16.11.2015 the trial Court acquitting the accused persons directed to initiate proceeding under Section 63 of the Narcotic Drugs and Psychotropic Substances Act for confiscation of the vehicle, leading to filing of the present Appeal for release of the vehicle on Supurdnama.

3. Learned Counsel for the Appellant submits that the Appellant is the present registered owner of the Vehicle. He had purchased the said vehicle from the original registered owner – Ram Niwas Goyal on 25.07.2012 i.e. much before the date of incident. However, the name of the present owner was not got transferred in the registration certificate. He further submits that since the vehicle is lying idle for over 3 years 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 Appellant. He further undertakes to give any sort of support required on any proceedings initiated by the authorities.

4. Counsel for the State opposes the claim of the Appellant submitting that the offence said to have been committed using the seized vehicle does not warrant any interference by this Court as the reasons assigned for confiscation of the vehicle in impugned judgment dated 16.11.2015 are just and proper.

5. The Supreme Court in the case of **Sunderbhai Ambalal Desai Vs. State of Gujrat**, reported in **2002 (10) SCC 283** in paragraphs 7 and 17 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.”

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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.”

6. 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.

7. In the instant case, trial has been concluded and confiscation proceeding by the competent authority is not completed. The admitted position in the present case is that the present Petitioner or for that matter the original owner namely Ram Niwas Goyal both are not accused persons in the offence for which the vehicle has been seized. Further, there is no specific averment made by the prosecution or for that matter the present Petitioner or the original owner were part of larger conspiracy in the offence for which the vehicle was seized. Yet, another fact which can not be ignored is that in the criminal case initiated against the accused persons in respect of the present vehicle involved in the commission of the offence i.e. in Special Case No. 1/2013 resulted in the acquittal of the accused persons vide judgment dated 16.11.2015. 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 Appellant till the confiscation proceedings are completed subject to certain conditions he can use it so that the vehicle does not become junk.

8. For the foregoing reasons, it is directed that pending the confiscation proceeding the seized vehicle belonging to the Appellant, i.e., Bolero bearing Registration No. C.G. 13 C-0702 , be released to the Appellant upon his furnishing an appropriate bond and guarantee to the satisfaction of the Court below for return of the said vehicle. 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 and confiscation proceedings 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.

9. With the aforesaid observations, the present Criminal Appeal is allowed.

Sd/-

(P. Sam Koshy)
Judge