

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL MISC. PETITION NO. 320 OF 2016

Abhishek Jaiswal, S/o Rajendra Prasad Jaiswal, aged about 35 years, R/o- Shankar Bhawan, Old High Court Road, P.S.- City Kotwali, (before the Court below he was represented by Special Power of Attorney holder Shri Rajendra Prasad Jaiswal), Bilaspur, District- Bilaspur (C.G.)

... Petitioner

Versus

State of C.G., through Station House Officer, Police Station- Kelhari, District- Koriya (C.G.)

... Respondent

For Petitioner	:	Mr. Vinay Pandey, Advocate.
For Respondent-State	:	Ms. M. Asha, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

25/04/2016

1. The present petition under Section 482 of CrPC has been filed seeking for releasing of a Car (TATA Aria), bearing Registration No. CG10-N/3666, on Supurdnama.
2. Facts of the case in brief are that the above referred Car was found to be involved in a case under Section 20(B) of the N.D.P.S. Act carrying about 2.49 quintal of cannabis. The said vehicle has been seized and is in the custody of the Police authorities since 18.10.2015. According to the Petitioner, his father had taken the vehicle to Ranchi (Jharkhand) and on 10.10.2015 while he was returning back to Bilaspur en route had stopped at a place in Kasabel (Jashpur) for having tea and snacks. When he came out of the tea shop he found that the vehicle was missing. He had immediately lodged a complaint of the vehicle being stolen before the Station House Officer, Kansabel Police Station on the same day itself. In due course of time, the Kansabel police after investigation finally on 5.12.2015 registered Crime No. 231 of 2015. In between, Police Station,

Kelhari under District Koriya found the said vehicle of the Petitioner in an abandoned condition on 18.10.2015 and in the course of search they found 2.49 quintal of cannabis in the said vehicle and accordingly registered a case under the provisions of N.D.P.S. Act and took the vehicle into custody.

3. Learned Counsel for the Petitioner submits that he had immediately thereafter moved an application under Section 451 of CrPC for releasing of the seized vehicle on Supurdnama but the Court below rejected the application vide impugned order dated 17.2.2016 holding that since the vehicle of the Petitioner was involved in the offence under the provisions of N.D.P.S. Act and that the quantity of cannabis seized was quite large, there are sufficient materials for initiating confiscation proceedings confiscating the seized vehicle and therefore rejected the same leading to the filing of the instant petition under Section 482 of CrPC.

4. According to the Petitioner, since the vehicle is lying idle from October, 2015 no fruitful purpose would be served in case if the vehicle remains idle in the custody of the police personnels exposed to the extreme whether 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.

5. 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.

6. Counsel for the State opposes the claim of the Petitioner submitting that the nature of offence said to have been committed in which the vehicle is involved is quite serious in nature and the quantity of cannabis seized also is quite large and accepting a confiscation proceeding it would not be proper at this juncture for releasing the vehicle to the Petitioner.

7. 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.”

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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.”

8. 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.

9. In the instant case also, trial is going on and confiscation proceeding is yet to be initiated 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.

10. For the foregoing reasons, it is directed that the vehicle belonging to the Petitioner, i.e., TATA Aria car, bearing Registration No. CG10-N/3666, Chasis No. MAT614007CRC01246 and Engine No. 22LDICOR09CXYJ06712, 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 or to the satisfaction of the concerned Trial Court.

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

Sd/-
(P. Sam Koshy)
Judge