

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL REVISION No. 705 of 2016

Santosh Kumar Singh S/o Nardeshwar Singh Aged About 55 Years
Registered Owner Of The Vehicle, R/o. - House No. 10 / 80, 9th Batalian,
Behind Police Welfare Petrol Pump, P/s. & District - Reeve (M.P.)

---- Applicant

Versus

State Of Chhattisgarh Through : S.H.O. Of The P/s. Saria, District -
Raigarh Chhattisgarh

.... Non-applicant

For Applicant	:	Mr. Abhishek Saraf, Advocate.
For Non-applicant-State	:	Ms. M. Asha, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

29.07.2016

1. The present Revision under Section 397 read with Section 401 of CrPC has been filed challenging the order dated 21.07.2016 passed by the Special Judge (N.D.P.S. Act) District – Raigarh in Special Case No. 12/2016 wherein an application for release of new sold vehicle Mahindra Max Pick Up, Chasis No. MA1ZT2GLKF1B23574 and Engine No. GLF1B66327, which was seized in the course of investigation for the offence punishable under Section 20 (B) of the N.D.P.S. Act, on Supurdnama was rejected.
2. The case in nutshell is that one Rohit Tiwari along with Pushpendra Dwivedi were found transporting 195 kg of canabbis on 11.07.2015. The Police authorities arrested them and also seized the vehicle and a case under Section 20 (B) of N.D.P.S. Act was registered against them. The matter is pending before the Special Judge (N.D.P.S. Act) Raigarh registered as Special Case No. 12/2016.
3. Learned Counsel for the Applicant submits he is the registered owner of the vehicle. For the use and upkeep of the vehicle he had executed a Power of attorney in favour of one Martand Singh authorizing

him the complete responsibility of the newly sold vehicle Mahindra Max Pick Up, Chasis No. MA1ZT2GLKF1B23574 and Engine No. GLF1B66327 and Martand Singh who in turn entered a hire purchase agreement with the accused Rohit Tiwari. It is said that after execution of said hire purchase agreement with the accused Rohit Tiwari the incident took place on 11.07.2015 and therefore the present Applicant moved an application under Section 451 of Cr.P.C. before the Court below for release of the seized vehicle on Supurdnama which the Court below vide its order dated 21.07.2016 has rejected the application, leading to the filing of the present Revision Petition.

4. Learned Counsel for the Applicant submits that the vehicle is lying idle in the custody of the Respondent since 11.07.2015 i.e more than one year has lapsed. He further submits that trial itself is moving at a very slow pace and in as much as the charges itself has not been framed in the present case till date and there is all possibility of a considerable time consumed in the conclusion of the trial, therefore prays that the vehicle may be released on Supurdnama.

5. Counsel for the State opposes the claim of the Applicant submitting that the nature of offence said to have been committed is quite serious and that the impugned order rejecting the Applicant'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 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.”

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.”

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 also 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 is still under process and confiscation proceeding by the competent authority is not completed. The admitted position in the present case is that the present Applicant is not accused person 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 Applicant, the original owner was part of larger conspiracy in the offence for which the vehicle was seized. 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 Applicant 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 order of the Court below dated 21.07.2016.

9. It is directed that pending the confiscation proceedings the seized vehicle belonging to the Applicant, i.e., new sold vehicle Mahindra Max Pick Up, Chasis No. MA1ZT2GLKF1B23574 and Engine No. GLF1B66327, be released to the Applicant 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 for the same offence 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 present Criminal Revision is allowed.

Sd/-

**(P. Sam Koshy)
Judge**