

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL REVISION NO. 696 OF 2016

Abhay Singh, S/o Dani Singh, aged about 35 years, R/o Fathamuda,
Juthmil, Raigarh, Outpost- Jutmil, District Raigarh (C.G.)

... Applicant

Versus

State of Chhattisgarh, through District Magistrate, Raigarh, District Raigarh
(C.G.)

... Non-applicant

For Applicant	:	Mr. Vivek Tripathi, Advocate.
For Respondent-State	:	Mr. U.K.S. Chandel, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

08/08/2016

1. By way of the present Criminal Revision filed under Section 397/401 CrPC, the Applicant has challenged the order dated 13.7.2016 passed by the Special Judge (under N.D.P.S. Act), Raigarh in Special Case No. 06 of 2016 whereby the application of the Applicant preferred under Section 457 CrPC for releasing of the vehicle (Maruti Ritz) car, bearing Registration No. CG13-UD/4289 on Supurdnama has been rejected.

2. Brief facts of the case are that on 8.3.2016 the Applicant was found to be in possession of 2.200kg of Ganja carrying in the seized Maruti Ritz car and therefore Crime No.128 of 2016 was registered at Police Outpost Jutmil, Kotwali, Raigarh under Section 20(B) of N.D.P.S. Act.

3. Counsel for the Applicant submits that the Applicant has subsequently been released on bail and that the trial is progressing at a very slow pace and till now only two of the witnesses have been examined and there is no likelihood of early conclusion of the trial. He further submits that the seized vehicle of which the Applicant is a

registered owner is lying idle and 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 Applicant. He also submits that even confiscation proceeding has not been initiated taking into account the fact that the trial is still undergoing and therefore prayed for release of the seized vehicle on Supurdnama.

4. Counsel for the State however opposes the claim of the Applicant on the ground 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 application for release of the seized vehicle on Supurdnama does not warrant any interference by this Court as the reasons assigned for rejecting the said application are just and proper.

5. The Supreme Court in **Sunderbhai Ambalal Desai Vs. State of Gujrat, 2002 (10) SCC 283**, has laid down the guiding principles for releasing the vehicle seized by the police. For ready reference paragraphs 7 and 17 of the said judgment are 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, 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 view of above, considering the fact that the Applicant is the registered owner of the seized vehicle and also taking note of the fact that the confiscation proceeding has not been started, no useful purpose would be served if the seized 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 subject to certain conditions he can use it so that the vehicle does not become junk after some time.

8. For the foregoing reasons, the impugned order rejecting the application for release of the seized vehicle on Supurdnama is not proper and the same is set aside. It is directed that the seized vehicle belonging to the Applicant, i.e., Maruti Ritz, bearing Registration No. CG13-UD/4289, be released to the Applicant upon his furnishing an appropriate bond and guarantee to the satisfaction of the concerned 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.

9. With the aforesaid observations, the Criminal Revision is allowed.

Sd/-
(P. Sam Koshy)
Judge

/Sharad/