

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL REVISION NO. 901 OF 2016

Prashant Gulhare, S/o Ghanshyam Gulhare, R/o Tikrapara, Mannu Chauk
Shiv Pan Centre, Police Thana City Kotwali, District Bilaspur (C.G.)

... Petitioner

Versus

State of Chhattisgarh, through Police Station- Civil Line, District Bilaspur
(C.G.)

... Respondent

For Petitioner	:	Mr. Vikash Pandey, Advocate.
For Respondent-State	:	Mr. Lav Sharma, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

17/11/2016

1. The present revision under Section 397 of CrPC has been filed assailing the order dated 1.4.2016 passed by Special Judge (Narcotics), Bilaspur in Case No. 320 of 2015, whereby the Court below has rejected the application filed by the Applicant under Section 451 of CrPC for release of the vehicle (Bajaj Pulsar), bearing Registration No. CG10-NB/2715, on supurdnama.

2. According to the Applicant he is not the accused in the case rather it is a case where the seized vehicle belonging to him was taken by one of his neighbours namely Rajendra Kumar and the said person is said to have been caught by the police authorities carrying 750 ample of Rexogesic injections on 22.7.2015. According to the Applicant he is not in any manner directly or indirectly related to the offence nor was he at any point of time having knowledge that the said Rajendra Kumar had taken the said vehicle from the Applicant with an intention of carrying the said narcotic substance.

3. Counsel for the Applicant submits that the vehicle involved in the offence is in the custody of the police authorities since 22.7.2015, that is, almost about 1 year and 4 months. He further submits that no fruitful purpose would be served if the vehicle remains idle in the custody of the authorities exposed to the extreme weather conditions and the vehicle would get decayed day by day and would further deteriorate by passage of time to the extent that it would become unusable and therefore in the interest of justice the vehicle may be released to the Applicant. He also submits that the case is pending consideration before the Trial Court and it is at the stage of recording of the evidence of the prosecution witnesses and therefore there is no likelihood of early disposal of the case. He further undertakes to give any sort of conditions required till the finalisation of the case or for that matter any other proceedings initiated by the authorities.

4. Counsel for the State however opposes the revision on the ground that the Applicant's vehicle was involved in the commission of offence of carrying narcotic substance and therefore it would not be proper at this juncture if the vehicle is released on supurdnama. However, the State Counsel does not dispute the fact that the Applicant was not one of the accused persons in the offence.

5. Considering the fact that the Applicant is the registered owner of the seized vehicle; further the Applicant not being an accused in the offence alleged for which the vehicle has been seized; and that the trial is at the stage of recording the evidence of the prosecution witnesses also the fact that the vehicle is lying idle in the custody of police for last about 1 year and 4 months, 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 other hand, 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.

6. The view of this Court stands fortified by the decision of the Supreme Court in the case of **Sunderbhai Ambalal Desai Vs. State of Gujrat, 2002 (10) SCC 283**, wherein the Supreme Court 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.”

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, 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. For the foregoing reasons, it is directed that the seized vehicle belonging to the Applicant, i.e., (Bajaj Pulsar), bearing Registration No. CG10-NB/2715, 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