

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

WPCR No. 204 of 2016

- Sushant Kumar Behera S/o Banbihari Behera, Aged About 45 Years R/o Village Khaliyapani, Police Station Junagarh, District Kalahandi (Odisha)

---- Petitioner

Versus

- State Of Chhattisgarh Through Police Chowki, Nawagarh, Police Station Mainpur, District Gariyaband, (Chhattisgarh)

---- Respondent

For Petitioner	Mr. Mohammad Afroz Athar, Advocate
For Respondent/State	Mr. UNS Deo, Government Advocate

Hon'ble Shri Prashant Kumar Mishra
Order On Board

31/8/2016

1. Heard.
2. The petitioner has preferred this petition under Article 226 of the Constitution of India seeking a direction to the respondents to forthwith release him and pay adequate compensation.
3. The petitioner had earlier preferred an application under Section 439 of the Code of Criminal Procedure (in short "Cr.P.C.") before the VI Additional Sessions

Judge, Raipur, which has been dismissed on merits vide order dated 26.07.2016 (Annexure P/1).

4. It is argued that since there is no FIR against the petitioner and there is no complainant in this case, the petitioner has been wrongly detained by the Police, therefore, he deserves to be released.
5. Once the petitioner has invoked the Sessions Court's jurisdiction under Section 439 of Cr.P.C., he should have availed the remedy available to him under Section 439 itself by moving the application before the High Court.
6. In the order passed by the Sessions Court, it is mentioned that *Istgasa* No.01/2016 has been registered at P.S. Mainpur District Gariyaband, wherein, the Police has found that the petitioner being driver of the Truck No.C.G 07 C 3145 was found transporting iron rods and tin sheet from Devbhog (Orissa) to Chhattisgarh and when intercepted, he was not found to have any lawful document authorising him to transport the said goods. The Police suspected that the goods are stolen goods, therefore, *Istgasa* has been registered for the offence under Section 379 of IPC. Thus, it cannot be said that the no offence has been registered against the petitioner.

7. In the considered opinion of this Court, this petition under Article 226 of the Constitution of India is not maintainable as the petitioner has remedy before this Court itself under Section 439 Cr.P.C.
8. Accordingly, the writ petition is dismissed, as not maintainable. Sd/-

Judge

(Prashant Kumar Mishra)

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