

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.M.P. No. 1169 of 2015

- Harish Chandra Tiwari S/o Sachidanand Tiwari Aged About 47 Years R/o Quarter No. 86 Heera Nagar, Mukhya Sadakpara Raigarh Tah. & Distt. Raigarh Chhattisgarh

---- Petitioner

Versus

- State Of Chhattisgarh Through Sub Divisional Officer (Forest) Chaal Tahsil Dharamjaygarh District Raigarh Chhattisgarh

... Respondent

For Petitioner	:	Mr. N.K. Malaviya, Advocate.
For Respondent-State	:	Mr. Rajendra Tripathi, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

12.08.2016

1. The present petition under Section 482 of CrPC has been filed seeking for release of seized vehicle Tata 207 (new Sold) bearing Chasis No. MAT478012D9C07179 and Engine No. 497SP38CWY612908, on Supurdnama.

2. Brief facts of the case are that the above seized vehicle was found loaded with 6 logs of Saguan wood (Teak wood) and 8 logs of Saguan wood were lying near the vehicle. The said vehicle was seized by the Sub-Divisional Officer, Chaal Forest Division on 16.08.2014 and since then it is in the custody of the Respondent in connection with P.O.R. No. 8139/2007 registered on 16.08.2014. An application was moved by the Petitioner under Section 457 of CrPC for releasing the seized vehicle on Supurdnama which was rejected by the Judicial Magistrate First Class, Dharamjaygarh vide order dated 05.09.2014 in

Misc. Criminal Case No. 73/2014 on the ground of jurisdiction. The said order dated 05.09.2014 was challenged by the Petitioner before the First Additional Sessions Judge, Raigarh which affirmed order of the Chief Judicial Magistrate vide order dated 10.12.2014 in Criminal Revision No.136/2014, leading to the filing of the present petition under Section 482 of CrPC.

3. Learned Counsel for the Petitioner submits that the Petitioner is the registered owner of the seized vehicle. The criminal case against him is still pending. He further submits that since the vehicle is lying idle in open sky for more than 2 years, no fruitful purpose would be served if the vehicle remains idle in the custody of the Respondent 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 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.

4. Counsel for the State opposes the claim of the Petitioner submitting that the nature of offence said to have been committed in which the seized vehicle was involved, is quite serious and that the impugned order rejecting the Petitioner'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.

5. The Supreme Court in the case of **Sunderbhai Ambalal Desai Vs. State of Gujrat**, reported in **2002 (10) SCC 283** at paragraphs 7

and 17 has categorically 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.”

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 the Supreme Court has expressed that it is not advisable to keep the seized vehicle in the custody in open condition which is prone to natural decay on account of weather conditions for a long period.

7. In the instant case criminal case against the Petitioner is still pending. The confiscation proceeding is under process by the Forest Department. A period of more than 2 years have passed and therefore no useful purpose would be served if the vehicle is allowed to further

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.

8. For the foregoing reasons, it is directed that pending the confiscation proceedings the seized vehicle belonging to the Petitioner, i.e., Tata 207 new Sold bearing Chasis No. MAT478012D9C07179 and Engine No. 497SP38CWY612908, be released to the Petitioner upon his furnishing an appropriate bond and guarantee to the satisfaction of the Judicial Magistrate First Class, Dharamjaygarh for return of the said vehicle on Supurdnama, 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 including the confiscation proceeding if any initiated by the competent authority. 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.

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

Sd/-

**(P. Sam Koshy)
Judge**