

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 521 of 2016

Rahul @ Rajkumar Yadav S/o Tulsi Ram Yadav Aged About 24 Years R/o Behind Gayatri Mandir, Chantidih, Police Station - Sarkanda, Bilaspur, District - Bilaspur Chhattisgarh.

---- Appellant

Versus

State Of Chhattisgarh Through Station House Officer, Police Station - Koni, District Bilaspur Chhattisgarh.

.... Respondent

For Appellant	:	Mr. Malay Shrivastava, Advocate.
For Respondent-State	:	Mr. U.K.S. Chandel, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy

Order on Board

01.07.2016

1. The present Appeal has been preferred under Section 454 CrPC assailing the order dated 25.02.2016 passed by Additional Sessions Judge, Bilaspur.
2. By way of said impugned order the Court below has rejected the application under 452(2) Cr.P.C. preferred by the present Appellant seeking for release of motor cycle bearing Registration No. CG-10-NB-1557 seized by the prosecution in the course of investigation in a criminal case wherein the present Appellant has been convicted for the offence under Sections 307/34, 452/34 and 201 IPC and 25 of the Arms Act.
3. Learned Counsel for the Appellant submits that the present Appellant was convicted vide order dated 10.11.2015 and sentenced to RI for 5 years and fine of Rs. 2000/-, RI. For 3 years and fine of Rs. 1000/-, RI for 2 years and fine of Rs. 500/- for the offences under Sections 307/34, 452/34, 201 of IPC

respectively and RI for one year and fine of Rs. 500 for the offence under Section 25 of Arms Act with defaults stipulations. Aggrieved with the said order he preferred a Criminal Appeal No. 1441/2015 which is pending before this Court.

4. He further submits that the present Appellant has also been enlarged on bail by this Court after suspending the jail sentence vide order dated 12.02.2016 in Criminal Appeal No. 1441/2015 which is still pending. Meanwhile, present Appeal has been filed by the Appellant under 452 of CrPC for release of the seized motor cycle. The said vehicle is in the custody of the Respondent since 06.09.2014, that is it is almost two years the vehicle is lying with the Police authority. There is likelihood of the same getting decayed. Therefore, he prays for release of the seized vehicle.
5. Leaned State Counsel however opposes the said appeal and submits that the present Appeal in its present form at this juncture is not sustainable for the reason that the Criminal Appeal against the conviction order passed by the Court below is already pending before this Court, wherein he has already been granted bail. The application for release of the vehicle ought to have been moved by way of an application in the said Criminal Appeal. He further draws attention towards the observation made by the Court below in Para 5 of the judgment which also reflects the same.
6. Considering the rival contentions put forth by the parties, this Court is of the opinion that the Court below has not committed a error of laws or facts while rejecting the same. In the light of reason which the Court below has referred to the observation

made in the original order of the conviction that in case of appeal being preferred, the motor cycle would be released subject to the direction given by the Appellate Court, while rejecting the application under Section 452(2) Cr.P.C. preferred by the Appellant.

7. Therefore, in the given circumstances the present Appeal in its present form and also the application under Section 452 preferred by the Appellant before the Trial Court are not maintainable and the present Appeal is accordingly rejected.

Sd/-

(P. Sam Koshy)
Judge