

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.M.P. No. 751 of 2016

Sunil Sharma S/o Bharosa Sharma Aged About 50 Years R/o Bayron Bazar, Raipur, P.S. - Baryon Bazar, Tahsil & District Raipur Chhattisgarh.

---- Petitioner

Versus

State Of Chhattisgarh Through The Collector, Mahasamund, District Mahasamund Chhattisgarh.

... Respondent

For Petitioner	:	Mr. Vikash Pradhan, Advocate.
For Respondent-State	:	Mr. Vaibhav A. Goverdhan, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

19.07.2016

1. The present petition under Section 482 of CrPC has been filed seeking for release of seized vehicle Bolero Vehicle bearing Registration No. C.G.-04-HA/8402, on Supurdnama.
2. Brief facts of the case are that the above seized vehicle was found carrying 45 litres of country made liquor. The said vehicle was seized by the Police Station – City Kotwali, Mahasamund on 17.08.2015 and since then it is in the custody of the said Police Station in connection with Crime No. 346/2015 registered under Sections 34(2) of Chhattisgarh Excise Act against the Accused persons. An application was moved by the Petitioner under Section 457 of CrPC for releasing the seized vehicle on Supurdnama which was rejected by the Chief Judicial Magistrate, Mahasamund vide order dated 21.04.2016 in Misc. Criminal Case No. S-132/2016. The said order dated 21.04.2016 was challenged by the Petitioner before the Sessions Judge, Mahasamund which affirmed order of the Chief Judicial Magistrate vide order dated 30.06.2016 in Criminal

Revision No.H-17/2016, 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. He has not been made an accused in the case. He further submits that since the vehicle is lying idle for the last 11 months. 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 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**, which was a judgment passed under the same law enacted in the State of Gujrat, 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 the instant case charge sheet has not been filed. The confiscation proceeding is under process by the Collector, Mahasamund but the owner/Petitioner has not received any notice till date in this regard. A period of almost 11 months 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., Bolero Vehicle bearing Registration No. C.G.-04-HA/8402, be released to the Petitioner upon his furnishing an appropriate bond and guarantee to the satisfaction of the 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 to the satisfaction of the concerned Trial Court.

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

Sd/-

(P. Sam Koshy)
Judge