

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Cr.M.P. No. 752 of 2016

Umesh Jaiswal S/o Motilal Jaiswal Aged About 28 Years (Wrongly Mentioned As Aged About 20 Years In The Cause Title), R/o Kevra Ghucha Para (Wrongly Mentioned As Ghuha Para), Post & P.S. Jhilmil, Tehsil Bhaiyathan, Revenue & Civil District Surajpur, Chhattisgarh.

---- Petitioner

Versus

State Of Chhattisgarh Through Station House Officer Jhilmil, Revenue & Civil District Surajpur, Chhattisgarh.

... Respondent

For Petitioner	:	Mr. Surfaraj Khan, 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 Tata Magic bearing Registration No. C.G.-16 B 2093, on Supurdnama.
2. Brief facts of the case are that the above seized vehicle was found carrying illicit coal. The said vehicle was seized by the Deputy Supreintendant of Police- Surajpur on 02.01.2016 and since then it is in the custody of the Police Station - Jhilmili in connection with Crime No. 01/2016 registered under Section 379 IPC and Sections 4(1)(a), 21(1) & 21(4) of Mines & Minerals(Development & Regulation) Act, 1957 against the Petitioner and another co-accused. An application was moved by the Petitioner under Section 451 of CrPC for releasing the seized vehicle on Supurdnama which was refused to be decided vide order dated 24.06.2016 in Criminal Case No. 258/2016 by the Judicial Magistrate First Class, Surajpur on account of a stay order from this Court dated

11.05.2016 in W.P. (Cr.) No. 166/2016, 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 further submits that since the vehicle is lying idle for the last 7 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**, 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 proceedings of Criminal Case No. 258/2016 has been stayed and is pending before Judicial Magistrate First Class, Surajpur. The owner/Petitioner has not received any notice till date in connection with confiscation proceedings. A period of almost 7 months have already passed since the vehicle was seized, 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 Magic bearing Registration No. C.G.-16 B 2093, 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