

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL MISC. PETITION NO. 581 OF 2016

Dilip Sarkar, S/o Adivya Sarkar, aged about 38 years, Caste Kayasth, R/o Nayapara Antagarh, P.S. and Tahsil Antagarh, District North Bastar, Kanker (C.G.)

... Petitioner

Versus

State of Chhattisgarh, through authorized Forest Officer, Antagarh, District North Bastar, Kanker (C.G.)

... Respondent

For Petitioner	:	Mr. C.R. Sahu, Advocate.
For Respondent-State	:	Mr. Ashish Shukla, Govt. Advocate.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

07/11/2016

1. The present petition under Section 482 of CrPC has been filed by the Petitioner seeking for release of the seized vehicle, Mahindra TU-N-300, white in colour, without number, bearing Engine No. SMF-6 K 19528 and Chasis No. F-6 KU 6984, on supurdnama.

2. Briefly stated facts of the case are that on 6.1.2016 the said vehicle was found in possession of a Tiger skin and on the basis of which a criminal case i.e., Forest Criminal Case No. 7577 of 2014 was registered against the accused persons for the offence punishable under Sections 9, 39, 40(2), 44, 49(B)(ii), 50, 51, 52 of the Wild Life (Protection) Act, 1972 and the said vehicle was seized on 7.1.2016 and since then it is in the custody of the forest authorities.

3. According to the Counsel for the Petitioner, the application for Supurdnama of the seized vehicle filed by the Petitioner was rejected by the Deputy Forest Officer, Bhanupratappur on 1.2.2016 against which he had moved before the Chief Conservator of Forest, North Bastar, Kanker who also on 6.4.2016 rejected the application for Supurdnama. Assailing

the said order dated 6.4.2016, a revision was preferred by the Petitioner vide Criminal Revision No.2 of 2016 and the Revisional Court i.e., the Additional Sessions Judge, Bhanupratappur, District North Bastar, Kanker has also rejected the application vide its order dated 3.5.2016, leading to the filing of the present petition.

4. Counsel for the Petitioner submits that the Petitioner is not the accused in the criminal case and the accused persons includes, the driver of the seized vehicle and 19 other persons. According to the Counsel for the Petitioner the seized vehicle was being used for transportation of Tendu Patta which was being driven by the accused Surendra Narwas and the Petitioner is not directly or indirectly related in any manner for the commission of the alleged offences. He further submits that the Petitioner is not the accused person but is the registered owner of the seized vehicle.

5. It was further submitted by the Counsel for the Petitioner that as on date the trial is not concluded and that after the conclusion of the trial a confiscation proceeding will have to be initiated by the authorities and only thereafter the vehicle could be finally confiscated by the authorities. He also submitted that now when the vehicle is in the custody of the forest authorities since 7.1.2016, that is, almost for 11 months, no fruitful purpose would be served if the vehicle remains idle in the custody of the authorities 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 finalisation of the criminal case or for that matter any other proceedings initiated by the authorities.

6. Counsel for the State however opposes the petition on the ground that the gravity of offence is shown from the fact that the Tiger skin was recovered from the seized vehicle and that since the charge levelled against the accused persons and the vehicle seized is for the offence committed under the provisions of Sections 9, 39, 40(2), 44, 49(B)(ii), 50, 51, 52 of the Wild Life (Protection) Act, 1972, the vehicle cannot be released.

7. It is trite at this juncture to mention that in Writ Petition (Cr.) No. 57 of 2014, decided on 5.4.2016, in some what similar circumstances this Court has ordered that in the given facts and circumstances of the case even for the offence under the provisions of Wild Life (Protection) Act, 1972 the vehicle can be released on Supurdnama.

8. The Supreme Court in *Sunderbhai Ambalal Desai (supra)* has laid down the guiding principles for releasing the vehicle seized by the police. For ready reference paragraphs 7 and 17 of the said judgment are 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.”

9. Similar stand has also been taken by the Supreme Court recently in the case of **Multani Hanifbhai Kalubhai Vs. State of Gujrat & Another, 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.

10. In view of above, considering the fact that the Petitioner is the registered owner of the seized vehicle and also taking note of the fact that the trial is going on and that the vehicle involved in the case is already in the custody of the forest authorities since 7.1.2016 as such it is almost about 11 months now that the vehicle is lying idle in the custody of the authorities, no useful purpose would be served if the seized vehicle is allowed to 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.

11. For the foregoing reasons, it is directed that the seized vehicle belonging to the Petitioner, i.e., Mahindra TU-N-300, white in colour, without number, bearing Engine No. SMF-6 K 19528 and Chasis No. F-6 KU 6984, be released to the Petitioner upon his furnishing an appropriate bond and guarantee to the satisfaction of the concerned 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 or to the satisfaction of the concerned Trial Court.

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

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Sd/-
(P. Sam Koshy)
Judge