

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Appeal No. 1439 of 2015

Pramod Nahak S/o Shri Vijay Nahak, aged about 30 years, R/o Jaisingh Nagar, Ward No.6, Sahdol (MP) at present resident of Godaripara, Chirmiri, PS Chirmiri, Tahsil Khadagwa, Civil & Revenue District Korea (CG)

... Appellant

Versus

State of Chhattisgarh through District Magistrate, Baikunthpur, District Korea (C.G.)

... Respondent

For Appellant	:	Smt. Fouzia Mirza, Advocate.
For Respondent-State	:	Shri U. K. S. Chandel, P.L.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

29/07/2016

1. The present appeal has been filed seeking for releasing of a seized Tata Indigo bearing Chassis No. MT 601465 CWF 32111/14 and Engine No. CRAIL 08 FYLW 23639 on Supurdnama.
2. Brief facts of the case are that the above seized vehicle was found to be involved in carrying Ganja. The said vehicle was seized by the Police Station, Chirmiri on 27.12.2013 and since then it is in the custody of the said Police Station in connection with Crime No. 535/2013 registered under Sections 20, 467, 468 IPC and Section 20B of NDPS Act. An application was moved by the appellant for releasing of the seized vehicle on Supurdnama which was rejected by the Sessions Judge, Korea vide impugned order dated 14.10.2015 in Misc. Criminal Case No. 15 of 2015 leading to the filing of the present appeal under Section 454 of CrPC.

3. Learned Counsel for the appellant submits that there were two accused persons in the case and both of them have been acquitted of the charges levelled against them vide judgment dated 07.07.2014 passed by the Special Judge, NDPS Act, Korea in Special S. T. No.1/14. According to the counsel for the appellant, he is not aware of any acquittal appeal being preferred against the said order by the State. She submits that even as on date the confiscation proceeding is moving at a very slow pace and the appellant who is the registered owner of the seized vehicle till date has not received any notice from the Authority who is proceeding with the confiscation case. She further submits that since the vehicle is lying idle for more than 2 ½ years no fruitful purpose would be served if the vehicle further remains 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 appellant. She further undertakes to give any sort of conditions required any other proceedings initiated by the authorities.

4. Counsel for the appellant has relied upon the judgment passed by the Supreme Court in the case of **Sunderbhai Ambalal Desai Vs. State of Gujrat**, reported in **2002 (10) SCC 283**, wherein in paragraphs 7 and 17 the Supreme Court has categorically enumerated the guidelines for releasing of the vehicle seized by the police.

5. However, counsel for the State opposes the claim of the appellant for release of the seized vehicle on Supurdnama.

6. The Supreme Court in paragraphs 7 and 17 of *Sunderbhai* case (supra) has 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.”

XXX

XXX

XXX

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.”

7. 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 also 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.

8. Taking into consideration the peculiar facts and circumstances of the case more particularly the fact that the accused persons have already been acquitted in the criminal case, the appellant is not the accused person and he is the registered owner of the seized vehicle which is lying in the custody of the Police for more than 2 ½ years, this Court is of the opinion that no useful purpose would be served if the 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 appellant subject to certain conditions he can use it so that the vehicle does not become junk after some time.

9. For the foregoing reasons, it is directed that pending the confiscation proceeding, the seized vehicle belonging to the appellant i.e. a Tata Indigo bearing Chassis No. MT 601465 CWF 32111/14 and Engine No. CRAIL 08 FYLW 23639, be released to the appellant 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. All these conditions shall be till the confiscation proceedings are pending. He shall also undertake that he shall produce the vehicle as and when required by the prosecution in case if an appeal is preferred against the acquittal. He shall further undertake to produce the vehicle to the competent authority which is hearing the confiscation proceeding if an order is passed against the appellant. 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. The undertaking and condition also would be to abide by the final order passed in the confiscation proceeding whenever the same is completed.

10. With the aforesaid observations, the present appeal is allowed.

Sd/-

(P. Sam Koshy)
Judge