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HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL MISC. PETITION NO. 360 OF 2016

Shyama Chauhan, S/o Sadaram Chauhan, aged about 56 years, R/o Sector-10, Bhilai Nagar, District- Durg (C.G.)

... Petitioner

Versus

State of Chhattisgarh, through District Magistrate- Rajnandgaon, District- Rajnandgaon (C.G.)

... Respondent

For Petitioner	:	Mr. Jitendra Gupta, Advocate.
For Respondent-State	:	Mr. Bhaskar Payashi, Panel Lawyer.

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, Maruti 800 Car bearing registration No. CG07-G/1639, on supurdnama.
2. The application for Supurdnama of the seized vehicle filed by the present Petitioner has been rejected by the Chief Judicial Magistrate, Rajnandgaon in Criminal Case No. 3421 of 2015 on 4.12.2015. That a revision was preferred against the said order vide Criminal Revision No. 82 of 2015. The Revisional Court i.e., the Additional Sessions Judge (Atrocity) Rajnandgaon, has rejected the revision vide its order dated 2.2.2016, leading to the filing of the present petition.
3. Counsel for the Petitioner submits that the Petitioner is not the accused in the criminal case and that on 9.9.2015 the police authorities of Police Station Somni, District Rajnandgaon had found the said vehicle being used by the accused Shamsher Singh *alias* Shammi, Kuldeeo Singh *alias* Sonu and Roshan Kumar Funde *alias* Golu and they were in possession of Leopard skin in the said vehicle belonging to the present

Petitioner. The vehicle was immediately taken into custody and a criminal case, i.e., Criminal Case No. 3421 of 2015, has been registered against the accused persons for the offence under Sections 39(3)(a) & (b), 48A, 49 and 52 of the Wild Life (Protection) Act, 1972. The Petitioner in between had moved an application under Section 457 of CrPC for release of the vehicle on Supurdnama. He further submits that the Petitioner is not the accused person but is the registered owner of the seized vehicle and that even as on date the trial is not concluded and it is at the very initial stage and it will take a long time for conclusion of the trial.

4. Counsel for the Petitioner further submits that after the conclusion of the trial there will a confiscation proceeding which has 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 police authorities since 9.9.2015, that is, almost for 14 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 finalisation of the criminal case or for that matter any other proceedings initiated by the authorities.

5. Counsel for the Petitioner in support of his submissions has also relied upon the judgment passed by the Supreme Court in the case of **Sunderbhai Ambalal Desai Vs. State of Gujrat, 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. He further submits that this Court has also in Writ Petition (Cr.) No. 57 of

2014 in an offence under the provisions of the Wild Life (Protection) Act, 1972 itself on 5.4.2016 has passed an order holding that the vehicle which has been seized under the provisions of the Wild Life (Protection) Act, 1972 can also be released on Supurdnama.

6. Counsel for the State however opposes the petition on the ground that since the charge levelled against the accused persons and the vehicle seized is for the offence to have been committed under the provisions of Sections 39(3)(a) & (b), 48A, 49 and 52 of the Wild Life (Protection) Act, 1972, the vehicle cannot be released.

7. Having considered the rival contentions put forth on either side and on perusal of the record what is undisputed position as reflects is the fact that the criminal case is at the initial stage and many witnesses are yet to be examined and unless the criminal trial itself is concluded the confiscation proceeding cannot be initiated. Further, the vehicle involved in the case is already in the custody of the police authorities since 9.9.2015 as such it is almost about 14 months now that the vehicle is lying idle in the police custody. In addition, it is also trite at this juncture to mention that this High Court in Writ Petition (Cr.) No. 57 of 2014, decided on 5.4.2016, in some what similar facts has held 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 he is not an accused and further taking note of the fact that the trial is going on, 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. The view of this Court stands fortified by the order of the Madhya Pradesh High Court passed in the matter of *Madhukar Rao v. State of M.P. & Others*, reported in 2000 (1) L.J. 304.

12. For the foregoing reasons, the impugned order rejecting the application for release of the seized vehicle on Supurdnama is not proper and the same is set aside. It is directed that the seized vehicle belonging to the Petitioner, i.e., Maruti 800 Car bearing Registration No. CG07-G/1639, 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.

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

Sd/-
(P. Sam Koshy)
Judge