**NAFR**

**HIGH COURT OF CHHATTISGARH, BILASPUR**

**Criminal Revision No.711 of 2016**

Mithai Lal Jaiswal S/o Late Sonauram Aged About 50 Years R/o Shantipur, Dhuma, Police Station & Tahsil Takhatpur, District Bilaspur Chhattisgarh

**---- Applicant**

**Versus**

State Of Chhattisgarh Through - Station House Officer, Police Station - Baloda, District Janjgir - Champa Chhattisgarh

**------Non-Applicant**

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For Applicant: Shri Amit Kumar, Advocate.
For Non-Applicant/State: Shri Vaibhav A. Goverdhan, Panel Lawyer.

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**Single Bench: Hon'ble Shri P. Sam Koshy, J**
**Order On Board**

**16.9.2016**

**1.** The present Revision Petition has been filed assailing the impugned order dated 21.7.2016 whereby the application under Section 457 Cr.P.C filed by the Applicant for release of the vehicle was rejected by the Special Sessions Judge, (NDPS), Janjgir-Champa.

2. Learned Counsel for the Applicant submits that the present Applicant is a registered owner of Scorpio jeep bearing registration No.CG 10 AB/7097. According to the Applicant, the vehicle was purchased by him for the purpose of using it as taxi. The three accused persons in the instant case had approached the Applicant for providing the vehicle on rent which the Applicant had accepted and had sent his son as the driver of the said vehicle. It was on 13.7.2016 when the Applicant's son was taking the three accused persons from Kota, Distt. Bilaspur to Janjgir-Champa, en route, on interception of the police authorities, the accused persons were found in possession of 15 kgs of cannabis and therefore, the three accused and the son of the Applicant were

prosecuted for the offences under Section 20(B) of the NDPS Act. He further submits that the present Applicant was not involved in the commission of the said offence in any manner and that the said vehicle is lying seized in police station – Baloda since 13.7.2016 and is getting decayed in heavy rains of the season.

3. He further submits that since the vehicle is lying idle since 13.7.2016, 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 Applicant. 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 Applicant 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. Counsel for the State opposes the application on the ground that the son of the present Applicant also is an accused in the instant case and the role of his son cannot be ruled out in the said offence and therefore, prays for rejection of the application for releasing the vehicle.

6. The Supreme Court in pargraphs 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:
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> 1. owner of the article would not suffer because of its remaining unused or by its misappropriation;
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> 2. court or the police would not be required to keep the article in safe custody;
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> 3. if the proper panchnama before handing over possession of the article is prepared, that can be usedin evidence instead of its production before the court during the trial. If necessary, evidence could also berecorded describing the nature of the property in detail; and
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> 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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> XXX XXX XXX
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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."

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 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 the weather conditions for a long period.

8. He further submits 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 Applicant subject to certain conditions he can use it so that the vehicle does not become junk after some time.

9. Having considered the facts and circumstances of the case and also taking note of the fact that the present Applicant is the actual owner of the said vehicle and that he is not the accused in the said offence and that the vehicle in dispute may not be of further use for the purpose of conducting of the trial. The Applicant gives an undertaking of making available the said vehicle as and when required. It is directed that the seized vehicle belonging to the Applicant, i.e. Scorpio jeep bearing registration No.CG 10 AB/7097 be released to him 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 any other 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. In the undertaking, a condition also would be to abide by the final order passed in the confiscation proceeding, if any, whenever the same is completed.

10. With the aforesaid observations, the Criminal Revision is allowed.

Sd/-

(P. Sam Koshy)

**JUDGE**

Priya