

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

CRIMINAL REVISION NO. 831 OF 2016

Mohd. Nasim S/o Mohd. Rajjak Mansuri, aged about 24 years, by caste-Muslim, R/o Village- Rehat, Thana- Chorhat, Tahsil- Hujur, Civil & Revenue District- Rewa (M.P.)

... Petitioner

Versus

State of Chhattisgarh, through District Magistrate, Bastar, District Jagdalpur (C.G.)

... Respondent

For Petitioner	:	Mr. Sunil Sahu, Advocate.
For Respondent-State	:	Mr. V.K. Netam, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

04/11/2016

1. The present revision under Section 397/401 of CrPC has been filed by the Petitioner seeking for release of the seized vehicle, Mahindra Xylo bearing registration No. MP17-TA/1807 on supurdnama.

2. Briefly stated facts of the case are that on 10.6.2015 the said vehicle was found carrying 145.900kg of Ganja and therefore the vehicle was seized by the police authorities and Crime No.159 of 2015 was registered at Police Station Bodhghat, Jagdalpur, under Section 20(B) of the N.D.P.S. Act and said vehicle is in the custody of the said police station since then. An application was moved by the Petitioner under Section 452 of CrPC for releasing of the seized vehicle on Supurdnama which was rejected by the Special Judge (N.D.P.S. Act), Bastar at Jagdalpur vide order dated 7.7.2016 in Special Case No. 05 of 2015, leading to the filing of the present petition.

3. Counsel for the Petitioner submits that the Petitioner is not an accused in the instant case and the accused in the instant case is one Sachin. He further submits that Petitioner is the registered owner of the

seized vehicle that was being used for transportation purpose and the Petitioner was not in any manner related to the crime. The Counsel further submits that the seized vehicle has a taxi permit and it was being used by various customers and he is not directly responsible for any of the customers misusing the vehicle after being taken on hire. He next submitted that the seized vehicle of which the Petitioner is a registered owner is lying idle for a period of more than one year and four months and 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. Counsel for the Petitioner also submitted that the evidence in the instant case is still not concluded as one of the co-accused person is absconding and therefore a considerable period of time is likely to be consumed in the conclusion of the trial which necessitates the ground of Supurdnama of the seized vehicle. 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.

4. 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.

5. Counsel for the State however opposes the claim of the Petitioner on the ground that the nature of offence said to have been committed in which the seized vehicle is involved is quite serious in nature and that the impugned order rejecting the application for release of the seized vehicle

on Supurdnama does not warrant any interference by this Court as the reasons assigned for rejecting the said application are just and proper.

6. 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.”

7. 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.

8. 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, 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.

9. 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., Mahindra Xylo bearing Registration No. MP17-TA/1807, 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.

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

Sd/-

(P. Sam Koshy)
Judge