

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 1089 of 2016

- Balaji Buildcon Through Partners :

1. (i) Smt. Jaspal Kaur Aged about 53 Years Widow Of Late Palvinder Singh Gill, R/o Agroha Society Raipura, D.D. Nagar, Raipur, Chhattisgarh.

1. (ii) Smt. Sapna Jain Aged about 45 Years W/o Manoj Jain R/o Tagore Nagar, Raipur, Through Power Of Attorney Holder Manoj Jain, Aged About 46 Years, S/o Pukhraj Jain, R/o Tagore Nagar, Raipur, Chhattisgarh.

---- Petitioner

Versus

- State Of Chhattisgarh Through The Police Station Azad Chowk, Raipur, Chhattisgarh.

---- Respondent

For Petitioner	:	Mr. Ankur Agrawal, Advocate
For State	:	Mr. S.R.J. Jaiswal, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy

Order on Board

07/11/2016

1. The present Petition has preferred under Section 482 of the Cr.P.C. assailing the order dated 30.7.2016 passed by the 7th Additional Sessions Judge, Raipur in the Criminal Revision No. 179/2016 whereby the Revisional Court has affirmed the order of the Judicial Magistrate First Class, Raipur in Criminal Case No. 4077/2016 on 26.05.2016. Vide the two orders the court below have rejected the application for the release of vehicle on Supurdnama.
2. Learned Counsel for the Petitoiner submits that it is the case where the vehicle is owned by Balaji Buildcon. The said firm has four partners namely Palvinder Singh, Rajendra Jain, Jaspal kaur and Sapna Jain . It is alleged that Rajenda Jain has forged the signature

of Palvinder Singh and has purchased a vehicle in the name of the company but was using it for his personal use. It is said that after Palvinder Singh who later on had died and subsequently it was found that accused Rajendra Jain had forged the signature of Palvinder and has embezzled the money and committed fraud with the company Balaji Buildcon for which a complaint was lodged by the Petitioner Jaspal Kaur. and Sapna Jain which has been registered by the Police Station Ajad chowk as Criminal No. 244/15 and after investigation the said accused has been prosecuted for the offence under section 420, 406, 467 and 468 of the IPC. Counsel for the Petitioner submits that after the Rajendra Jain was arrested the Police authorities have also seized the vehicle on 15.12.2015 and since then it is in the custody of the police authorities and is exposed to extreme weather condition.

3. He further submits that since the vehicle has been taken on loan in the firm's name and it is the firm who is regularly repaying the monthly installment and as such prays that the vehicle may be released to the Petitioner so that the same can be utilized rather letting it get junk.
4. It is also contended that the vehicle involved in the case is not in any manner required for the trial nor is it a piece of evidence. He further undertakes that they shall keep the vehicle in the same condition and shall also produce the same as and when the Court orders for its presence.
5. Counsel for the Petitioner 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.

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.”

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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 weather conditions for a long period.

8. Learned State Counsel however the opposing the Petition submits that it is the case where forgery by one of the partner of the firm has been committed and the vehicle has been seized in the complaint case, therefore, it would not be proper at this juncture to release the vehicle to the firm.
9. Having considered rival contentions put forth on either side and on perusal of the record what is not in dispute is the fact that the Petitioner herein has lodged a complaint case against one Rajendra Jain to have embezzled the amount and committed forgery with the firm M/s Balaji Buildcon of which the Petitioners are also partners along with Rajendra Jain.
10. The Trial Court rejected the Supurdnama application only on the ground that the signature of one of the partner namely Palvinder has not been obtained by the Petitioner for claiming the Supurdnama of the vehicle. The said opinion of the magistrate was further affirmed by the Revisional Court while deciding the Revision Petition.
11. Learned Counsel for the Petitoiner at this juncture submits that it is a case where Palvinder has already died on 12.12.2014 and as such it is not possible for the Petitioner to take his signature who has already died two years back.
12. He further submits that when it is undisputed that the vehicle is in the name of the firm. Therefore, the Court should not have come in the way of releasing the vehicle to the Petitioner.
13. For the foregoing reasons, it is directed that the seized vehicle belonging to the Petitioner, i.e., Ecosports bearing Registration NO. CG-04-HP-1271, be released to the Petitioner firm upon its 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 it shall not change the ownership of the vehicle nor shall change the colour of the vehicle neither shall create a third party right or interest over the said vehicle. The firm shall also undertake that it shall produce the vehicle as and when required by the prosecution during the course of investigation, trial and even at the appellate stage. The firm 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 to the satisfaction of the concerned Trial Court.

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

Sd/-

(P. Sam Koshy)
Judge