

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.41067 of 2016

Arising Out of PS.Case No. -343 Year- 2014 Thana -ROSERA District- SAMASTIPUR

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Sanjeet Mahto son of Late Mahendra Mahto resident of village- Hasa, P.S.-
Warishnagar, District- Samastipur.

.... Petitioners

Versus

The State of Bihar

.... Opposite Party

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Appearance :

For the Petitioner/s : Mr. Nagendra Kumar Singh, Advocate
Mr. Ranjeet Kumar Yadav, Advocate
Mr. Gajendra Prasad Singh, Advocate
For the State : Mr. Ahmad Ali, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 29-08-2017

This application under Section 482 of the Code of Criminal Procedure (for short 'CrPC') has been filed by the petitioner for quashing the order dated 11.02.2016 passed by the learned Additional Session Judge, Rosera in Session Trial No. 415 of 2015, arising out of Rosera P. S. Case No. 343 of 2014 by which the application filed by the petitioner for release of the seized motorcycle bearing Registration No. BR-33-E/3979 has been rejected.

2 The undisputed facts of the case are as under :-

- (a) The petitioner has been made a named accused in connection with Rosera P. S. Case No. 343 of



2014 dated 08.11.2014 registered under Sections 399 and 402 of the Indian Penal Code and Sections 25 (1-b)a, 26 and 35 of the Arms Act.

- (b) A motorcycle bearing Registration No. BR-33-E/3979 was seized in connection with the aforesaid police case during investigation of the case. The same was recovered from the orchard situated behind the house of the petitioner.
- (c) The petitioner was remanded to judicial custody on 08.11.2014 and was released after being granted bail by this court, vide order dated 13.07.2015.
- (d) After being released on bail, the petitioner filed an application for release of the seized motorcycle.
- (e) The learned Additional Session Judge, Rosera called for a report from the investigating officer of the case on the application of the petitioner. The investigating officer submitted his report stating therein that the police have no objection to the prayer of the petitioner for release of the motorcycle.
- (f) After receipt of the report of investigating officer, the learned Additional Session Judge, Rosera rejected the application of the petitioner for release of the motorcycle, vide order dated 11.02.2016 on the ground that the certificate of insurance, certificate of pollution as well as the driving licence of the petitioner had expired.



3. Learned counsel for the petitioner has submitted that the order impugned is bad in law in view of the fact that the expiry of certificate of insurance or certificate of pollution or driving licence could not have been made a ground for rejection of the application for release of the motorcycle. He has submitted that there is no requirement of valid driving licence of owner of a vehicle for its possession. He has submitted that the certificate of insurance and certificate of pollution required for plying the vehicle on road. He has submitted that even for issuing such certificates, physical verification of the vehicle by the concerned authorities is a must, which is possible only if it is released.

4. On the other hand, learned Additional Public Prosecutor for the State has submitted that the order impugned does not suffer from any illegality. He has submitted that the vehicle, in question, had been used in committing a serious crime. He has submitted that during course of trial also, the vehicle would be required to be exhibited.

5. I have heard learned counsel for the parties and perused the record.

6. Under CrPC chapter XXXIV deals with disposal of property. Section 451 of the CrPC deals with the order for custody and disposal of property pending trial in certain cases, which reads



as under:-

“451. Order for custody and disposal of property pending trial in certain cases.-

When any property is produced before any Criminal Court during an inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation.—For the purposes of this section, "property" includes—

(a) property of any kind or document which is produced before the Court or which is in its custody.

(b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.”

7. The Supreme Court in **Sunderbhai Ambalal Desai vs. State of Gurarat** (Supra) succinctly explained the object and scheme of the various provisions of the CrPC as to disposal of case.

It observed as follows:-

“The object and scheme of various provisions of the code appear to be that where the property



which has been the subject matter of an offence is seized by the police, it ought not to be retained in the custody of the court or of the police for any time longer than what is absolutely necessary.”

8. Thus, from the ratio laid down by the Supreme Court, it is clear that unless it is absolutely necessary, the court cannot retain the seized property either in custody of the court or in custody of the police. Hence, it is the duty of the court to pass appropriate orders in respect of the seized property without delay.

9. After taking into account the horrifying situation of the case property such as vehicles, machines etc. found lying in police station premises and court premises and ultimately becoming junk and loosing their value held in **Sunderbhai Ambalal Desai** (supra), the Supreme Court held that the powers under Section 451 of the CrPC should be exercised expeditiously and judiciously. It observed in paragraph 7 as under:-

“7. In our view, the powers under Section 451, Cr.P.C. 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 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.”

10. While dealing with the seized vehicles from time to time by the police in commission of various offences in **Sunderbhai Ambalal Desai** (Supra), the Supreme Court observed in paragraph 17 as under:

“17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police station for a long time. 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.”

11. In sum and substance, it can safely be said that the Supreme Court has laid down that in case of seized vehicles during investigation or trial, they should not be allowed to deteriorate by



being kept unused and unattended in the premises of the police station.

12. So far as the reason assigned by the learned Additional Session Judge for rejection of the application of the petitioner seeking release of the motorcycle is concerned, the same is unsustainable. It is an admitted position that the certificate of registration is in the name of the petitioner. Merely because the licence of the petitioner or certificate of pollution or certificate of insurance of the motorcycle, which is in the custody of police had expired, the prayer for release of the motorcycle ought not to have been rejected. The court below ought to have appreciated the fact that even after expiry of licence or aforesaid certificates, the petitioner did not lose the status of ownership of the motorcycle, in question.

13. Admittedly, the motorcycle is lying in the police station since 08.11.2014. Hence, on or after 08.11.2014 when the certificates of insurance and pollution expired, the motorcycle could not have been produced before the authorities concerned. Once the vehicle would be released, the petitioner may obtain the required certificates on deposit of fee from the authorities concerned. The denial of release of the motorcycle on the ground of expiry of certain certificates is, thus, totally misconceived.



14. In view of the discussions made hereinabove, this application is allowed. The impugned order dated 11.02.2016 passed by the learned Additional Session Judge, Rosera in Session Trial No. 415 of 2015, arising out of Rosera P. S. Case No. 343 of 2014 is quashed. The motorcycle bearing Registration No. BR-33-E/3979 seized in connection with Rosera P. S. Case No. 343 of 2014 is directed to be released to the custody of the petitioner on the following conditions:

- (a) The petitioner shall execute a personal bond of Rs.25,000/- (twenty five thousand only) to the satisfaction of the learned Magistrate;
- (b) He shall not alienate the motorcycle or alter its nature; and
- (c) He shall produce the motorcycle before the court concerned, as and when directed by the learned Magistrate.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
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