

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.48746 of 2016

Arising Out of PS.Case No. -315 Year- 2015 Thana -BAIRIYA District-
WESTCHAMPARAN(BETTIAH)

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Santosh Kumar Ram @ Santosh Kumar son of Ramashish Ram, resident of village-
Chajwa Balia, P.O.- Balia, P.S.- Andar, District- Siwan.

.... Petitioner/s

Versus

The State of Bihar

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mrs. Mira Kumari, Advocate
: Mr. Shrikant Mishra, Advocate
For the State : Mr.Sanjay Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 02-08-2017

This application under Section 482 of the Code of Criminal Procedure (for short 'the CrPC') has been filed for quashing of the order dated 11.08.2016 passed in Trial No.10 of 2016 arising out of Bairia P.S. Case No.315 of 2015 by learned Additional District and Sessions Judge-V, Bettiah, West Champaran by which he has rejected the prayer of the petitioner to release the motorcycle bearing registration no.BR-29P-2732.

2. It is submitted by the learned counsel for the petitioner that Bairia P.S. Case No.315 of 2015 was registered on 19.12.2015 under Sections 498A, 498B and 498C/34 of the Indian Penal Code and Sections 20, 22, 24, 27 and 29 of the Narcotic Drugs and



Psychotropic Substances Act (for short 'NDPS Act') in which one Sabhapati Ram, brother-in-law of the petitioner, who had taken his motorcycle on 18.12.2015 for going to the house of his relative was also made accused on the basis of the allegation that the said motorcycle was intercepted and he was arrested by the police and, on search, 500 gram Charas is said to have been recovered from the dicky of the bike. On completion of investigation charge-sheet was submitted against Sabhapati Ram and others. However, the petitioner not was made accused in the case.

3. It has been submitted that the petitioner is the registered owner of the said vehicle. He has no concern with the offence alleged. However, his motorcycle is lying in the police station, as the contraband Charas is said to have been recovered from it while it was being driven by his brother -in-law Sabhapati Ram.

4. Learned counsel for the petitioner has contended that the petitioner filed an application for release of the said vehicle. On the application of the petitioner, the trial court had called for a report from the police. The investigating officer of the case had confirmed in his report that the petitioner is a registered owner and the police had no objection if the vehicle is released in his favour, but still the court below has rejected the prayer of the petitioner for release of the vehicle. He has submitted that the aforesaid order passed by the court



below is erroneous in law and is contrary to the ratio laid down by the Supreme Court in the matter of **Sunderbhai Ambalal Desai vs. State of Gujarat [(2002) 10 SCC 283]**.

5. On the other hand, learned counsel for the State has submitted that the order passed by the learned court below cannot be held to be bad in view of the fact that the vehicle in question would be required in course of trial as material exhibit. It has also been submitted that since the vehicle was being used in smuggling of Charas, it is liable to be confiscated under Section 60 of the NDPS Act

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

7. From perusal of the order impugned dated 11.08.2016 it would be manifest that the trial court has rejected the application for release of the vehicle in question primarily on the ground that the offence is heinous and that the vehicle has been used for commission of illegal activity of smuggling of Charas. It is also an admitted fact that the petitioner has not been made accused in this case. It is true that Section 60 of the NDPS Act provides for confiscation of a vehicle used in illegal trade of contraband articles. However, Section 60 of the NDPS Act comes into play only after conclusion of the trial. In case the trial court comes to a conclusion that the accused person used the



vehicle in illegal trade of contraband article and is guilty of the offence, the vehicle can be confiscated. However, during the pendency of a criminal case, it would not be prudent to keep the vehicle lying in open sky in the police station.

8. The power of the court to deal with the seized property pending trial in certain cases is given in Section 451 of the CrPC. It 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.”

9. From a bare reading of Section 451 of the CrPC it would



be manifest that it empowers the court to pass appropriate orders with regard to property, such as (1) for the proper custody pending conclusion of enquiry or trial; (2) to order it to be sold or otherwise disposed of, after recording such evidence as it think necessary; and (3) if the property is subject to speedy and natural decay, to dispose of the same.

10. Keeping the provisions prescribed under Section 451 of the CrPC in mind, the Supreme Court in **Sunderbhai Ambalal Desai** (supra) observed as under:-

“In our view, whatever be the situation, it is of no use to keep such-seized vehicles at the police stations 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.”

11. The Supreme Court further observed that “Similarly for the narcotic drugs also, for its identification, procedure under Section 451 CrPC should be followed”.

12. Regard being had to the facts and circumstances of the case, the order passed by the court below cannot be sustained. Accordingly, the impugned order dated 11.08.2016 passed by the



learned Additional Sessions Judge-V, Bettiah, West Champaran in Trial No.10 of 2016 arising out of Bairia P.S. Case No.315 of 2015 is set aside.

13. The court below is directed to release the vehicle in question to the petitioner, who is registered owner with a condition that he shall not dispose of the same during the pendency of the trial and he shall produce the vehicle before the court or before such other authorities as the court may direct. While passing the order for release, the court below will be at liberty to take appropriate sureties from the petitioner to its own satisfaction.

14. With the aforesaid observations and directions, the application is disposed of.

(Ashwani Kumar Singh, J)

Md.S./-

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