

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.768 of 2017

Arising Out of PS.Case No. -null Year- null Thana -null District- BHOJPUR

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Sugreev Teli @ Sugreev Shah @ Sugriv Sao Son of Sri Lachuman Shah, R/o-Vill-Badakee Nanijor, P.S.-Brahampur, District-Buxar

.... Petitioner

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Petitioner : Mr. Rajiv Ranjan Kumar, Advocate

For the State : Mr. Uday Chand Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR

ORAL JUDGMENT

Date: 11-09-2017

Heard learned counsel for the petitioner as well as learned
APP appearing on behalf of the State.

2. This revision application is preferred against order dated 23.12.2016, passed by learned Sessions Judge, Ara in N.D.P.S. Case No.16 of 2016, arising out of Udwant Nagar P.S. Case No.295 of 2016 whereby the learned Sessions Judge, Ara rejected the application filed by the petitioner for release of his Mahindra XUV 500 vehicle, bearing Engine No.HHG 4D 24871 and Chassis No.MA 1 YU2HHUGC 18743.

3. A short fact of the case is that police, on secret information that some contraband was being transported in a Mahindra XUV vehicle without bearing registration number, kept waiting on the road side to apprehend the vehicle. Seeing the vehicle of same make without registration number coming on the road, they



stopped the vehicle and apprehended all the persons on the board and recovered 24.350 Kgs. of *Ganja*. All persons on board of the vehicle was made accused. The petitioner is not FIR named accused in this case. However, he claims ownership of the said vehicle and filed a petition before the trial court for the release of the said vehicle but the same was denied giving reason that though the vehicle was purchased on 17.06.2016 but petition for registration was filed on 01.09.2016, so expressing the suspicion of the petitioner's involvement in the case, the release of the vehicle was refused.

4. Learned counsel for the petitioner submits that petitioner up-till-now has not been made accused in this case and his vehicle is now registered and registration number is mentioned in the impugned order. The further contention of the learned counsel is that if the vehicle remains in the police station, the condition of the vehicle will deteriorate day to day on account of lack of maintenance and lying in idle condition exposed to vagaries of nature. Counsel for the petitioner placed reliance in the case of *Sunderbhai Ambalal Desai v. State of Gujarat*, reported in 2003 (4) PLJR 245(SC) as well as on the judgment dated 04.08.2015 passed in Cr. Misc. No.214 of 2015 and other analogous cases whereby in similar circumstances huge quantity of *Ganja* was recovered from a Scorpio and other vehicles but directed to be released under the provision of Sections 451 and 457



Cr.P.C.

5. Learned counsel for the State submits that the vehicle was plying on the road carrying contraband without having any registration number and the petitioner's involvement cannot be ruled out in this case.

6. However, the present situation is that up-till-now the petitioner has not been made accused in this case. The only question for consideration before this Court is that the seized vehicle would be released in favour of the petitioner or not. The law is clearly laid down by the Hon'ble Supreme Court in this matter in the case of *Sunderbhai Ambalal Desai (supra)*. The relevant paragraphs are paragraphs-17 and 18, which are quoted herein below:

“17. In our view, whatever be the situation, it is of no use to keep 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.

18. In case where the vehicle is not claimed by the accused, owner, or the insurance company or by third person, then such vehicle may be ordered to be auctioned by the Court. If the said vehicle is insured with the insurance company then insurance company be informed by the Court to take possession of the vehicle which is not claimed by the owner or a third person. If insurance company fails to take possession the vehicles may be sold as per the direction of the Court. The Court would pass such order within a period of six months from the date of production of the said vehicle before the Court. In any case, before handing over



possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed *panchanama* should be prepared.”

7. The Apex Court has further dealt the matter in view of Sections 451 and 457 Cr.P.C. giving a broader guideline for disposal of property pending criminal trial.

8. Applying the said principle in the present context also the Court finds that the vehicle should be released as per provision laid down in Sections 451 and 457 Cr.P.C. in favour of its owner till the pendency of the criminal trial or unless the confiscation proceeding is initiated. The impugned order does not disclose that the court had verified seeking report from the investigating agency with regard to the registered owner of the seized vehicle, so the court has to ascertain before release whether the petitioner is the registered owner of the concerned vehicle or not, so the impugned order dated 23.12.2016, passed by learned Sessions Judge, Ara in N.D.P.S. Case No.16 of 2016, arising out of Udwant Nagar P.S. Case No.295 of 2016 is set aside and the matter is further remanded back to the court of learned Sessions Judge, Ara for afresh consideration on the matter of the release of the vehicle. Further this Court is also of the view that the petitioner besides the report obtained by the court concerned is required to satisfy the court about the ownership of the vehicle for its release in his favour, on being satisfied the court shall release the



vehicle in favour of its registered owner after taking photograph in view of the Apex Court ratios decided in the case of *Sunderbhai Ambalal Desai (supra)*, having taken undertaking from the registered owner that he will not dispose of the vehicle during the pendency of the trial and will produce before the court as and when required. As far as confiscation proceeding is concerned, in view of Section 60(3) of the Narcotic Drugs and Psychotropic Substances Act, the court may initiate the confiscation proceeding of the vehicle in accordance with law but before that keeping the vehicle in police custody is of no use and it should be released in view of the observations made above.

9. With the aforesaid observations, the application stands disposed of.

(Arun Kumar, J.)

S.Kumar/-

AFR/NAFR	NAFR
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