

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Criminal Revision No. 27 of 2017

Ajit Kumar Upadhyay S/o Uday Kumar Upadhyay, aged about 28 years, R/o Village Bargideeh, Police Station and Tahsil Lundra, District Surguja Chhattisgarh

---- Applicant

Versus

State of Chhattisgarh through the Police Chowki, Manipur, Police Station Kotwali, District Surguja, Chhattisgarh

---- Respondent

For Applicant	:	Mr. Ashok Ku. Shukla, Advocate.
For Respondent-State	:	Mr. Ashok Swarnkar, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

22/02/2017

The present revision petition has been filed against the order dated 22.10.2016 passed by the Special Judge, NDPS, Ambikapur, District Surguja in Special Criminal Case No. 7 of 2016 whereby the Court below has rejected the application of the applicant seeking for releasing of the seized vehicle Bolero bearing Registration No. MP 09 CP 9641, on Supurdnama which is alleged to have been involved in the commission of an offence under the provisions of NDPS Act.

2. Counsel for the petitioner submits that the applicant in the present case is the registered owner of the seized vehicle and all the required valid documents in respect of the said vehicle are in his name. He submits that the present applicant was not directly or indirectly connected with the offence and the accused persons in good faith had taken the seized vehicle from the applicant by using the same for transportation of the drugs. He further submits that the vehicle is in the custody of the Police authorities since 21.07.2016 i.e. for almost a period of seven months and

that there is no likelihood of the early conclusion of the trial. Under this circumstance, if the vehicle is not released, it would get decayed and would further deteriorate by passage of time. That it would become unusable after some time and therefore in the interest of justice the vehicle may be released to the applicant. He further undertakes to give any sort of conditions required till the finalization of the criminal case or for that matter any other proceedings initiated by the authorities.

3. Counsel for the applicant 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.

4. Counsel for the State opposes the claim of the applicant submitting that one of the accused persons in the case of NDPS Act is the brother of the present applicant and therefore it can be presumed that the applicant had also knowledge of the transportation of the prohibited drugs. Therefore, the impugned order rejecting the Petitioner's application for release of the seized vehicle on Supurdnama does not warrant any interference by this Court.

5. This presumption of the State counsel is not sustainable for the reason that just because the brother of the applicant has committed an offence, the applicant cannot be looked upon with the same lens. The law with regard to seizure of a vehicle by now is well settled. The Supreme Court in *Sunderbhai* case (supra) in paragraphs 7 and 17 has laid down the guiding principles for releasing a 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.”

XXX

XXX

XXX

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.”

6. 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.

7. In the instant case, the vehicle was seized on 21.07.2016 and since then it is kept in the police station. Therefore, no useful purpose would be served if the vehicle is allowed to get exposed in the extreme weather conditions at the police station. On the contrary, if the vehicle is released to the applicant subject to certain conditions, he can use it so that the vehicle does not become junk after some time.

8. For the foregoing reasons, it is directed that the seized vehicle belonging to the applicant i.e. Bolero bearing Registration No. MP 09 CP 9641 be released to the applicant upon his 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 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 any other 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. The undertaking and condition also would be to abide by the final order passed in the confiscation proceeding whenever the same is completed.

9. With the aforesaid observations, the present Criminal Revision is allowed.

Sd/-

(P. Sam Koshy)
Judge