

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 102 of 2017**

- Tirath Raj Choubey S/o Lt. Shri Jhaldi Prasad, Aged About 46 Years R/o Village Gangapur, Post Lamgaon, Police Station Lundra, District Surguja, Chhattisgarh.

---- Applicant

Versus

- State Of Chhattisgarh Through The Police Station Lundra, District Surguja, Chhattisgarh.

---- Non-applicant

For Applicant:
For State

Ms. Neha Verma, Advocate
Mr. Lav Sharma, Panel Lawyer

Hon'ble Shri Justice P. Sam Koshy**Order on Board****07.02.2017**

1. The present Revision Petition under Section 397/401 of the Cr.P.C. has been filed against order dated 07.01.2017 passed by the Special Judge (NDPS), Ambikapur in Sessions Trial No. 06/2016 whereby an application moved by the present Applicant seeking for release of seized vehicle Honda Dream Yuga bearing Registration No. CG 15 CS 8783, Chasis No. ME4JC589FET177350, on Supurdnama was rejected.
2. Brief facts of the case are that the son of the present Applicant Murari Lal Choube has been made accused in Crime No. 77/2016 registered at Police Station, Lundra District – Surguja. It is

alleged that his son was carrying 11.25 grams brown Sugar with him on his motor cycle. Since his son has been arrested in connection with the said crime his son has executed power of attorney with the present Applicant for the purpose of seeking release of the seized vehicle on Supurdnama. In this case, the Court below has rejected application moved by the Applicant for release of the vehicle on Supurdnama on the ground that the said vehicle was used for the purpose of commission of the said offence.

3. Learned Counsel for the Applicant submits that the vehicle is lying idle with the Respondents since 17.07.2016 i.e. for about six months. No fruitful purpose would be served if the vehicle remains idle in the custody of the police personnels exposed to the extreme weather conditions. The vehicle would get decayed day by day and would further deteriorate by passage of time to the extent 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.
4. Learned Counsel for the State on the other hand opposes the claim of the Applicant submitting that the nature of offence said to have been committed in which the seized vehicle was involved is quite serious in nature and that the impugned order rejecting the

Applicant's application for release of the seized vehicle on Supurdnama does not warrant any interference by this Court as the reasons assigned for rejecting the application are just and proper.

5. The Supreme Court in the case of **Sunderbhai Ambalal Desai Vs. State of Gujrat**, reported in **2002 (10) SCC 283**, in paragraphs 7 and 17 has categorically enumerated the guidelines for releasing of the vehicle seized by the 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.”

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. For the foregoing reasons 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 can be released to the Applicant subject to certain conditions he can use it so that the vehicle does not become junk after some time.
8. Accordingly impugned order dated 07.01.2017 is quashed. It is directed that the seized vehicle belonging to the Applicant, i.e., Honda Dream Yuga bearing Registration No. CG 15 CS 8783, Chasis No. ME4JC589FET177350, 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 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.

9. With the aforesaid observations, the present Revision Petition stands allowed.

Sd/-

(P. Sam Koshy)
JUDGE