

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CRIMINAL MISC. PETITION NO. 208 OF 2017

Amit Kumar S/o Teejram Satnami, aged about 25 years, R/o Balodi, Police Station Sarseeva, District Balodabazar (CG).

... Petitioner

Versus

State of Chhattisgarh, through District Magistrate, District Janjgir Champa (C.G.)

... Respondent

For Petitioner	:	Shri Deepak Kumar Singh, Advocate.
For Respondent-State	:	Shri Ashok Swarnakar, Panel Lawyer.

Hon'ble Shri Justice P. Sam Koshy

Order on Board

15/02/2017

1. The present petition under Section 482 of CrPC has been filed seeking for quashment of order dated 13.01.2017 passed by the 1st Additional Sessions Judge, Sakti, Distt. Janjgir Champa in Criminal Revision No.46/2016. Vide the said impugned order, the revisional court has rejected the revision preferred against the order dated 29.11.2016 passed by the Judicial Magistrate First Class, Dabhra rejecting the application for releasing the seized vehicle Pick-up bearing Registration No. CG-22-G/4944, on Supurdnama.
2. It is a case where the present petitioner was found to have been involved in commission of offence under Sections 4 & 6 of the Chhattisgarh Agricultural Cattle Preservation Act and a case was registered as Crime No.168 of 2016 on 24.05.2016 at police station Dabhra, Distt. Janjgir Champa. An application was moved by the Petitioner under Section 452 of CrPC for releasing of the seized vehicle on Supurdnama which was rejected by the Judicial Magistrate First Class, Dabhra vide order dated 29.11.2016 in Criminal Case No. 400

of 2016 on the ground that same would be relevant for consideration of trial and the application for Supurdnama shall be considered after conclusion of trial. The said order dated 29.11.2016 was challenged by the Petitioner before the 1st Additional Sessions Judge Sakti. The revisional court vide order dated 13.01.2017 has rejected the revision petition. Surprisingly, the revisional court while deciding the revision has also held that application of the petitioner was not maintainable on the ground that the application for Supurdnama has been filed within a period of six months and that the Act does not empower the Magistrate for releasing the vehicle on Supurdnama within a period of six months from the date of seizure of the vehicle.

3. Learned Counsel for the Petitioner submits that the said finding of the revisional court is bad in law for the reason that the Crime number registered is 168 of 2016 and the date of commission of offence is 24.05.2016. The date of application before the court below was on 28.11.2016, and therefore, the application has been infact filed after a period of six months provided under the Act. Therefore, the application was not filed within six months. He drew the attention of the last paragraph of order of JMFC dated 29.11.2016 which also shows that this fact has been taken up by the Magistrate while rejecting the application, but the Magistrate rejected the application on merits. The trial is at the initial stage. Since the vehicle is lying idle and 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 Petitioner. 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. Counsel for the Petitioner has 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.
5. Counsel for the State opposes the claim of the Petitioner submitting that the nature of offence said to have been committed in which the seized vehicle is involved is quite serious in nature and that the impugned order rejecting the Petitioner'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. The Revisional Court has taken the date of seizure to be 31.05.2016 and if 31.05.2016 is the date of seizure then the application moved on 28.11.2016 is within six months. Therefore, the revisional court was right in rejecting the same.
6. Having heard the rival contentions put forth by the counsel for the parties and taking into consideration the fact that as on date the period of six months is already over. Further, the fact also not in dispute that Crime No.168 of 2016 in which the present petitioner has been prosecuted was registered on 24.05.2016, therefore, for all practicable purpose, the offence must have been committed and vehicle must have been seized on the same day i.e. on 24.05.2016, and if it is so, the application is beyond the period of six months as is required under the Act.
7. The Supreme Court in paragraphs 7 and 17 of *Sunderbhai* case (supra) has laid down the guiding principles for releasing the 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.”

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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.”

8. 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**, which was a judgment passed under the same law enacted in the State of Gujrat, 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.
9. In the instant case, trial is going on and 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 can be released to the Petitioner subject to certain conditions he can use it so that the vehicle does not become junk after some time.

10. For the foregoing reasons, it is directed that the seized vehicle belonging to the Petitioner, i.e., Pick-up bearing Registration No. CG22-G/4944, be released to the Petitioner 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 different 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.
11. With the aforesaid observations, the Criminal Misc. Petition is allowed.

**Sd/
(P. Sam Koshy)
Judge**

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