

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR

CR.R. No. 338 of 2017

Ankit Kumar, S/o. Shri Suresh Kumar, aged about 26 years, Caste-Shivhare,
R/o. Chanikhurd, Police Station – Biwar, District – Hamirpur (U.P.)

----Applicant

Versus

State Of Chhattisgarh, Through: District – Magistrate, Jagdalpur, Kartala,
District – Bastar, Chhattisgarh.

---- Respondent

For Applicant : Mr. Shakti Raj Sinha, Advocate

For State/Respondent : Ms. M. Asha, Panel Lawyer

Hon'ble Shri Justice Goutam Bhaduri

Order On Board

04/05/2017

1. Challenge in this petition is to the order dated 03.09.2016, passed by Special Judge, (Atrocities) Bastar, District – Jagdalpur (C.G.), whereby the application preferred by the petitioner for custody of the vehicle bearing No. D.L. 07 C.E. 6082 was dismissed, which was seized in connection with Crime No.224/2016, U/s. 20(B) of N.D.P.S. Act.
2. The brief facts of the case are that the applicant is the owner of the vehicle, which was taken by one Anil Kumar Gupta so as to visit the temple, therefore, the applicant had given the vehicle to him to visit the temple at Dantewada. Subsequently, as per the prosecution, the vehicle was intercepted and seized along with 50 kg. of cannabis. It

is case of prosecution that the vehicle was being driven at the relevant time by one Anil Kumar Gupta. The vehicle having been seized was kept in the police custody. Subsequently, an application was filed by the present applicant claiming himself to be the owner of the vehicle and the said application for custody of the vehicle was rejected. Hence this revision petition.

3. Mr. Shakti Raj Sinha, learned counsel appearing on behalf of the applicant would submit that rejection of the application for custody of the vehicle is without any rhyme and reason as the trial Court has gone on the presumption and held that the applicant though may be the registered owner of the vehicle but he could not obtain the vehicle on supurdnama on the ground that he had no conversation with his brother accused, who was held as is unbelievable. He further submits that such reasoning has no place while deciding the case under Section 457 of Cr.P.C.. He further submits that rejection was predominantly on the ground that the owner of the vehicle can also be an accused in the case and at the time of the rejection of the application for custody of the vehicle, the charge-sheet was not filed. He further submits that now charge-sheet has been filed confining the allegation to Anil Kumar Gupta and Raju Prajapati as an accused persons, therefore, the question whether the applicant was involved in the crime or not is completely ruled out by the prosecution itself. He further submits that the applicant being the registered owner of the vehicle, the vehicle may be handed over to him to avoid the destroy and decay of the vehicle.
4. Per contra, learned State counsel opposes the same.

5. The State counsel was directed to enquire about the fact whether confiscation has been made or not in respect of the vehicle. On verification it is submitted that as per communication received, confiscation proceeding has not been commenced and the proposal has been sent. It is further submitted that charge-sheet in this case has been filed against Anil Kumar Gupta and Raju Prajapati.
6. I have heard the learned counsel for the parties.
7. Perused the respective documents filed along with the petition as also the case diary. Perusal of the order would show that main rejection was on the ground that the applicant can also be an accused in the criminal case when the seizure was made. Presently as the submission is made by both the parties that charge-sheet has been filed, wherein the present applicant has not arrayed as an accused, therefore, as per the prosecution itself, the charges are confined to other co-accused and not to the present applicant. The case diary also contains the communication which shows that confiscation proceeding has been proposed and it has not been culminated till date.
8. Considering the fact in its entirety by the order dated 03.09.2016, the reasons assigned by the learned trial Court can not be appreciated and sustained. As has been held in case of ***General Insurance Council and Others Vs. State of Andhra Pradesh and Others***¹ as also in case of ***Sunderbhai Ambalal Desai Vs. State of Gujrat***², the vehicle having been seized, no purpose would be served in lying the vehicle at the disposal of authorities or at police

1 (2010) 6 SCC 768

2 (2002) 10 SCC 283

station. Keeping of the vehicle at police station necessarily will occupy the space or is prone to cause natural decay and may loose its road-worthiness if it is kept in stationary position. Further taking into the fact that charge-sheet has already been filed and the applicant claimed himself to be the registered owner of the vehicle and applying the aforesaid principles, it is directed that the vehicle be released in favour of the petitioner by way of interim measure till the disposal of the trial on the following conditions :-

- (i) Before release of vehicle proper panchnama be prepared.
- (ii) Photographs of vehicle should be taken and bond should also be produced that the article would be produced if required at the time of trial.
- (iii) Proper security i.e. personal bond of Rs.1.50 lakhs and like sum of surety be obtained before release of vehicle.

9. In view of forgoing discussions, the petition succeeds and is allowed. No order as to cost.

Sd/-
(Goutam Bhaduri)
Judge