

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Writ Jurisdiction Case No.275 of 2018

=====

Bharat Yadav, Son of Sri Kamal Yadav, resident of Village- Khoda Ahar, P.S.-
Barhi, District- Hazaribagh (Jharkhand).

.... Petitioner/s

Versus

1. The State of Bihar through the District Magistrate-cum- Collector, Patna.
2. The Senior Superintendent of Police, Patna.
3. The Superintendent of Police, Traffic, Patna.
4. The Officer-in-Charge of Traffic, Police Station, Patna.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Amit Kumar Anand, Adv.

For the Respondent/s : Mr. Sheo Shankar Prasad, SC-8

=====

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD

ORAL JUDGMENT

Date: 30-03-2018

This writ application has been preferred for setting aside the order dated 19.12.2017 passed by the learned Sub-Judge-IV-Cum-Additional Chief Judicial Magistrate, Patna in connection with Traffic P.S. Case No.181 of 2017. By the impugned order, the learned A.C.J.M., Patna has rejected the application preferred by the petitioner for provisional release of Tata Hitachi Ex-200 Pocklon Machine Bearing Serial No.2001-4722, Dr. No. OHL 00350, Agreement No.LOF 111, which has been seized in connection with Traffic P.S. Case No.181 of 2017 dated 15.11.2017 registered under Sections 279 and 304(A) of the Indian Penal Code.

Learned counsel for the petitioner submits that as per



the fardbeyan of one Sri Ajay Mahto the said pocklon machine was being driven by a driver and this petitioner happens to be owner of the said machine which was involved in causing death of the father of the informant due to rash and negligent driving by the driver of the vehicle. Learned counsel submits that the vehicle is lying in the open sky in the premises of the police station and over the period it is likely to get fully damaged and will be of no use if not allowed to be provisionally released on such terms and conditions which may be imposed in accordance with law. It is further submitted that the vehicle was procured by the owner under hypothecation agreement with a financier and for purpose of provisional release he is ready and willing to furnish such security/surety which may be fixed by this Court.

Learned counsel for the State is present and submits that the vehicle is involved in commission of an offence, therefore, it may not be released.

Having heard learned counsel for the petitioner and learned counsel representing the State, I am of the opinion that the trial court is required to consider whether a provisional release of the vehicle while fully protecting the interest of the prosecution by providing for adequate surety/security to be imposed upon the petitioner with such other terms and conditions whereunder the



petitioner shall not be allowed to dispose off the vehicle in question during the pendency of the trial, he would further not be entitled to encumber the vehicle in any manner whatsoever during the pendency of the case before the court below and prior to release of the vehicle a photograph of the vehicle shall be taken and a Panchnama shall also be prepared which will be duly certified by the petitioner giving an undertaking that he would not question the Panchnama and the photograph of the vehicle in question in course of trial would be just and proper. In my opinion, the court below may also consider whether such conditions would serve the purpose of the prosecution as the same may be adduced in course of trial by way of secondary evidence and in case the trial court finally comes to a conclusion that upon proof of guilt in the criminal case the vehicle in question is liable to be confiscated, petitioner being the owner of the vehicle, by virtue of the surety/security provided in the court at this stage would be liable to pay the value of the vehicle and thereby that aspect of the matter is also taken care of.

Submission that keeping the vehicle under the open sky till conclusion of the trial of the criminal case which is likely to take years and years together is not going to serve any purpose is required to be considered even at this stage. There are several judicial pronouncements of the Hon'ble Supreme Court whereunder these



aspects of the matter have been taken care of. Reference may be made in this regard to the judgment of the Hon’ble Supreme Court in the case of **Sunderbhai Ambalal Desai Vs. State of Gujarat** reported in **(2002) 10 SCC 283** and in the case of **General Insurance Council and others Vs. State of Andhra Pradesh and others** reported in **(2010) 6 SCC 768**.

In the facts and circumstances stated hereinabove, the petitioner is directed to file a fresh application in the court below for release of the vehicle which shall be considered by the court below in accordance with law in the light of the observations made hereinabove as also keeping in mind the judicial pronouncement on the subject by the Hon’ble Apex Court and the decisions mentioned hereinabove. Such application shall be considered by the court below within a period of two weeks from to the date of receipt/production of a copy of this order.

The application stands disposed of.

(Rajeev Ranjan Prasad, J)

Arvind/-

AFR/NAFR	
CAV DATE	
Uploading Date	02.04.2018
Transmission Date	02.04.2018

