

IN THE HIGH COURT OF JUDICATURE AT PATNA

Criminal Miscellaneous No.34211 of 2015

Arising Out of PS.Case No. -17 Year- 2014 Thana -BANKA District- BANKA

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Kaushal Kishore Ghosh @ Gope Jee @ Gopi Jee S/o Late Narendra Mohan Ghosh
R/o Village Kaheria, P.S. Banka, District Banka.

.... Petitioner/s

Versus

The State of Bihar through the Vigilance

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Ashutosh Singh, Adv.

For the State : Mr. Jharkhandi Upadhyay, APP

For the Vigilance : Mr. Arvind Kumar, Adv.

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

ORAL JUDGMENT

Date: 07-08-2018

Heard Mr. Ashutosh Singh, learned advocate for the petitioner, Mr. Jharkhandi Upadhyay, learned Additional Public Prosecutor for the State and Mr. Arvind Kumar, learned advocate for the Vigilance.

2. This application under Section 482 of the Code of Criminal Procedure (for short 'Cr.P.C') has been filed by the petitioner for quashing the order dated 23.01.2015 passed by the learned Special Judge Vigilance-II, Patna in Special Case No. 12 of 2014 arising out of Banka P.S.Case No. 17 of 2014 dated 20.01.2014 registered for the offences punishable under Sections 467, 468, 471, 420, 120-B of the Indian Penal Code and Sections 7 and 8 of the Prevention of Corruption Act, 1988 whereby and whereunder the prayer of the petitioner to release the seized cash amount of Rs.74,500/- and the samsung mobile set has been rejected.



3. The contention of the petitioner is that the petitioner is an authorized representative of M/s Jai Guru Automobile, Banka and M/s Kumar Agriculture & Equipments, Banka and the alleged seized cash amount was the money of those two establishments, which was given to the petitioner for registration of vehicles. The petitioner has neither prepared any false or forged document nor used the same illegally for his personal gain and no person came forward with a complaint that the petitioner ever cheated him. He further contended that when the petitioner filed an application, the same has been rejected on erroneous ground that the cash amount and the seized mobile set are material exhibits. He pleaded that when a report was called for from the Banka Police Station by the court, the police submitted a report on 16.10.2014 that the cash amount and the mobile set may be released in favour of the petitioner and the police would have no objection to such release, but still on flimsy ground the court below has rejected the application.

4. Learned counsel for the State and the learned counsel for the Vigilance opposed the application preferred by the petitioner mainly on the ground that the seized cash amount and the mobile set are material exhibits, which would be required to be proved in course of trial and, hence, the court committed no error in rejecting the application preferred by the petitioner.

5. I have heard learned counsel for the parties and carefully



perused the record.

6. The prosecution allegation as per the FIR inter alia is that the informant, who was the Officer-in-Charge of Banka Police Station, received an order of the Superintendent of Police, Banka on 20.01.2014 to launch an operation with intent to nab middlemen, who are involved in cheating public by providing government's scheme. The informant, after receiving such an order from the Superintendent of Police, Banka, along with other police officials reached near Katoria Bus Stand in front of Girls High School and caught the petitioner and on search recovered cash amount of Rs.74,500/- and a samsung mobile set besides several documents, such as, tax token, money receipt etc. The police prepared seizure list in presence of two independent witnesses and instituted Banka P.S.Case No. 17 of 2014 under Sections 467, 468, 471, 420, 120-B of the Indian Penal Code and Sections 7 and 8 of the Prevention of Corruption Act against the petitioner and took up investigation.

7. In course of investigation, an application under Section 451 of the Cr.P.C was filed by the petitioner on 31.05.2014 praying therein to release the cash amount and the seized mobile set in favour of the petitioner in the court of Special Judge Vigilance-II, Patna.

8. The learned Special Judge vide impugned order dated 23.01.2015 rejected the prayer of the petitioner on the ground that the seized cash amount and the mobile set are material exhibits and the



case is still pending investigation.

9. The provision prescribed under Section 451 in Chapter XXXIV of the Cr.P.C confers power upon the court for custody and disposal of property pending trial in certain cases. Merely because a property is required to be produced as material exhibit, it should not be released during pendency of investigation or trial, is not a justifiable ground for refusing the release of the property. The currency notes, in the instant case, are not alleged to be looted property. Similarly, even the mobile set is not alleged to be looted property.

10. There is no other claimant of the property alleged to have been seized. It is the case of the prosecution that the cash amount and the mobile set were seized from the possession of the petitioner. The petitioner does not dispute this fact. Even the police from whom the court had called for a report on the petition filed on behalf of the petitioner informed that they have no objection if the cash amount and the mobile set are released in favour of the petitioner. Under such circumstances, where the ownership of the cash and mobile set seized from possession of the petitioner was not disputed, I fail to understand any logic behind the rejection of the prayer for release of the seized property.

11. The Supreme Court in *Sunderbhai Ambalal Desai Vs. State of Gujarat [(2002) 10 SCC 283]* while interpreting the



provisions prescribed under Section 451 and 457 of the Cr.P.C, held that the power under Section 451 of the Cr.P.C. should be exercised expeditiously and judiciously. The Court held that expeditious and judicious exercise of power 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 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.

12. In view of the discussions made above and the ratio laid down by the Supreme Court in *Sunderbhai Ambalal Desai Vs. State of Gujarat* (Supra), the order impugned cannot be sustained.

13. In the opinion of this Court, the court below should have directed for release of the cash amount and the mobile set in favour of the petitioner after preparing proper *panchnama*.

14. Accordingly, the impugned order dated 23.01.2015 passed by the learned Special Judge Vigilance-II, Patna in Special Case No. 12 of 2014 arising out of Banka P.S. Case No. 17 of 2014 is



set aside and the court below is directed to release the seized cash amount and the samsung mobile set to the petitioner after preparing *panchnama* on furnishing sureties to its satisfaction.

(Ashwani Kumar Singh, J)

Pradeep/-

AFR/NAFR	NAFR
CAV DATE	N.A.
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