

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Miscellaneous No.51745 of 2017

Arising Out of PS.Case No. -10 Year- 2017 Thana -GOVERNMENT OFFICIAL COMP. District -
PURNIA

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Heera Singh, Son of Veer Singh, Resident of Mohalla- House No.247
Udyog Vihar, Ph. III, Gurgoun, Haryana, presently reside at A1/E Krishna
Market, Jhilmil Colony, H.O. East Delhi.

.... Petitioner/s

Versus

The Union of India Through Directorate of Revenue Intelligence, Regional
Unit, Patna.

.... Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Nachiketa Jha

For the Opposite Party/s : Mr. Manoj Kumar Singh, CGC

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**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN
PRASAD**

ORAL ORDER

6 25-09-2018 This application has been preferred for quashing of

the order dated 25.08.2017 passed in Special Case No.07 of 2017,

CIS No.5/2017 under Sections 20, 23, 25 and 29 of the N.D.P.S.

Act passed by the learned Sessions Judge, Purnea. By the

impugned order, the learned Sessions Judge has been pleased to

refuse to release the Truck bearing Reg.No. HR-55M/4635 in

favour of the petitioner.

Learned counsel for the petitioner submits that a

perusal of the DRI case as contained in Annexure-1 would show

that when the vehicle in question was intercepted, on search eight

red coloured plastic bags were found secreted behind and under



the seat. The bags were smelling of Ganja which were seized by the authorities of the Directorate of Revenue Intelligence, Regional Unit, Patna. The gross weight and net weight of all the eight packets seized from the vehicle were found to be 145.20 kg and 143.60 kg respectively.

Learned counsel submits that at this stage, the trial has yet not started and in terms of Section 63 of the N.D.P.S. Act, 1985 the trial court will decide whether the vehicle in question is liable to confiscation or not. It is, however, possible only after conclusion of the trial.

Relying upon the judgment of the Hon'ble Apex Court in the case of **Sunderbhai Ambalal Desai Vs. State of Gujarat** reported in **(2002) 10 SCC 283**, learned counsel submits that in the said case the Hon'ble Apex Court has taken note of the submissions of the learned senior counsel appearing for the State that a number of vehicles are being kept unattended in the police station premises and the vehicles become junk day by day and, therefore, appropriate directions are required to be issued to the learned Magistrates who are dealing with such matters to hand over such vehicles to their owners or to the person from whom the said vehicles are seized by taking appropriate bond and guarantee for the return of the said vehicles if required by the Court at any



point of time. The Hon'ble Apex Court took a view that whatever be the situation, it is of no use to keep such seized vehicles at the police stations for a long period. It was also observed that "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." Learned counsel, therefore submits that the vehicle in question be also ordered to be released because last almost one and half years the vehicle is lying under open sky, unattended and with everyday delay it is likely to lose its worthiness and ultimately when an order of confiscation is passed by the court below after conclusion of the trial, in the ultimate analysis, the State is not likely to be benefited by such confiscation. On the other hand, learned counsel submits that if the vehicle is ordered to be released on giving adequate guarantee, the interest of State may be saved.

Learned counsel representing the Union of India through Directorate of Revenue Intelligence has filed a counter affidavit. It is not disputed that in terms of legal position a decision as to confiscation will be taken only after conclusion of the trial and presently the trial has not yet started. Referring to the submissions made on behalf of the petitioner, learned counsel submits that in these circumstances the court, if willing, may



release the vehicle subject to the petitioner's submitting a bank guarantee of full seizure value and security bond as well as an affidavit that the said vehicle will not be used for any kind of smuggling of contraband goods in future.

In the given facts and circumstances of the case and the submissions noted hereinabove, this Court finds that since the trial has not yet started and no definite period may be fixed for conclusion of the trial and vehicle in question is lying in open sky for last one and half years, no fruitful purpose will be served by keeping the vehicle under seizure. There is every likelihood that over the period the vehicle may become junk and it will lose its worthiness. The conditions which have been sought to be imposed on the petitioner and as suggested in the counter affidavit seems to be reasonable as it is likely to serve the interest of the State/Union of India also if the vehicle may be allowed to be released on submission of Bank Guarantee and other conditions. This Court would, therefore, direct release of the vehicle in question provisionally on the petitioner furnishing the document and ownership and registration as also a bank guarantee of the value of the vehicle in question as may be assessed through a competent person as per direction of the court. Such bank guarantee shall be irrevocable bank guarantee and shall be extended by the petitioner



from time to time well before thirty days from the date of expiry of the period of validity of the bank guarantee, failing which the order granting release of the vehicle shall be liable to be withdrawn. The petitioner shall also furnish an undertaking that the vehicle shall not be used for any kind of smuggling of contraband goods in future. He will also give an undertaking that the owner of the vehicle shall not deal with the same in any manner whatsoever either by creating any third party right or by transferring the same in favour of any person during the confiscation proceeding. The petitioner also undertakes to produce the vehicle before the court or the authority concerned as the case may be. Before release of the vehicle a panchanama shall be prepared by taking photograph of the vehicle in presence of the petitioner and the same shall be certified by the petitioner which will be kept on record for future use as secondary evidence. The petitioner shall undertake that he would not challenge the panchanama which will be in the nature of secondary evidence to be adduced in course of trial.

The application stands disposed off accordingly.

(Rajeev Ranjan Prasad, J)

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