

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Revision No.459 of 2018

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Hridaya Sah @ Hriday Narayan Sah, son of Kailash Sah,
resident of Village-Kochas, P.S.-Kochas, District-Rohtas. At
present-8/4B, Central Colony, Mugal Sarai, Near Chandauli,
District-Chandauli, Uttar Pradesh

.... Petitioner/s

Versus

The State of Bihar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. N.K. Agrawal, Sr. Adv
Mr. Vijay Anand, Adv

For the Respondent/s : Mr. Sri Nawal Kishore Prasad, APP

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CORAM: HONOURABLE MR. JUSTICE ASHUTOSH KUMAR
ORAL ORDER

3 25-04-2018 The vehicle of the petitioner viz. a Truck bearing

Registration No. UP-67T-5569 was seized in connection with

Karakat P.S. Case No. 60 of 2018. The aforesaid vehicle was

refused to be released by the learned Sub-Divisional Judicial

Magistrate, Vikramganj vide his order dated 06.04.2018,

which order is under challenge.

Fourteen vehicles were seized on 11.03.2018 for
having overloaded sand which was in violation of the Bihar
Minor Mineral Concession Rules, 1972. One such vehicle
belongs to the petitioner.

It has been submitted on behalf of the petitioner that
the vehicle in question has a national permit which has been
issued by the Transport Department of Uttar Pradesh. The
truck in question was loaded with sand against a genuine e-



challan. Even though the challan was produced by the driver of the truck, the vehicle was seized without affording any reason to the driver by the C.O. Karakat.

The order passed by the learned Sub-Divisional Judicial Magistrate, Vikramganj does not state any reason why the prayer of the petitioner for release of his vehicle has been rejected.

Under the Bihar Minor Mineral Concession Rules, 1972, there is no provision for confiscation of any vehicle. That apart, it will only be seen during the investigation and perhaps in trial whether any offence has been committed or not. It would serve no purpose in keeping the vehicle in the police premises which will then be subject to the vagaries of nature.

Times without number, this Court as well as Hon'ble Apex Court has held that definite reasons have to be assigned for refusing to release any vehicle. If a person is found to be the owner of the vehicle, it should not ordinarily be refused to be released to him unless there are certain reasons accorded for the same. The nature of offence for which the seizure has been made also is not such so as to warrant refusal of release the vehicle during the pendency of the investigation as well as trial.

In ***Sunderbhai Ambalal Desai versus State of***



Gujrat (2002) 10 SCC 283 the Supreme Court has held in para 7 as follows:-

"7. In our view, the powers under Section 451 Cr.P.C 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.*

In **Smt. Basavva Kom Dyamangouda Patil versus State of Mysore and Another (1977) 4 SCC 358**, the Supreme Court again dealt with a case where the seized articles were not available for return to the complainant. In that context, the Supreme Court had observed in para 4 as follows:-

"4. The object and scheme of the various provisions of the Code appear to be that where the property which has been the subject-matter of an offence is seized by the police it ought not to be retained in the custody of the Court or of the police for any time longer than what is absolutely necessary. As the seizure of the property by the police amounts to a clear entrustment of the property to a Government servant, the idea is



that the property should be restored to the original owner after the necessity to retain it ceases. It is manifest that there may be two stages when the property may be returned to the owner. In the first place it may be returned during any inquiry or trial. This may particularly be necessary where the property concerned is subject to speedy or natural decay. There may be other compelling reasons also which may justify the disposal of the property to the owner or otherwise in the interest of justice. The High Court and the Sessions Judge proceeded on the footing that one of the essential requirements of the Code is that the articles concerned must be produced before the Court or should be in its custody. The object of the Code seems to be that any property which is in the control of the Court either directly or indirectly should be disposed of by the Court and a just and proper order should be passed by the Court regarding its disposal. In a criminal case, the police always acts under the direct control of the Court and has to take orders from it at every stage of an inquiry or trial. In this broad sense, therefore, the Court exercises an overall control on the actions of the police officers in every case where it has taken cognizance."

From the perusal of the impugned order, it appears that but for narrating the circumstances under which the vehicle was seized, no good ground has been given by the learned Court below in refusing to release the vehicle in favour of the petitioner.

The order impugned, therefore, is not fit to be sustained and is set aside.

The learned Sub-Divisional Judicial Magistrate,



Bikramganj is directed to release the vehicle viz. Truck bearing Registration No. UP-67T-5569 in favour of the petitioner after ascertaining that he is the genuine owner. This could be done by checking up the papers regarding ownership and possession of the vehicle in question.

The petitioner shall also be asked to furnish an undertaking that the vehicle in question shall not be sold till the disposal of the case and in case the learned Sub-Divisional Judicial Magistrate, Bikramganj is of the view that some sureties other than bank guarantee or cash is required to be taken from the petitioner, the same be done to the satisfaction of the learned Sub-Divisional Judicial Magistrate, Bikramganj.

With the aforesaid observation and direction, the petition stands allowed.

(Ashutosh Kumar, J)

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