

HIGH COURT OF CHHATTISGARH, BILASPUR

CRMP No. 315 of 2018

- Mahesh Kumar Jaiswal S/o Shartughan Prasad Jaiswal Aged About 23 Years R/o Girwani, P. S. Raghunathnagar, District Balrampur Ramanujganj Chhattisgarh

---- Petitioner

Versus

- The State of Chhattisgarh Through P. S. Pasta, Out Post Doura, District Surguja Chhattisgarh

---- Respondent

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For Petitioner : Mr. A.K.Prasad, Advocate

For Respondent : Mr. Adhiraj Surana, Dy. G.A.

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Hon'ble Shri Justice Goutam Bhaduri

Order On Board

23.02.2018

Heard

1. The instant petition is against the order dated 23.11.2017 whereby the order refusing to release vehicle on custody by an order dated 02.11.2017 passed by the J.M.F.C. Balrampur was affirmed by the Additional Sessions Judge Ramanujganj, Sarguja (C.G.).
2. As per the prosecution case, a case was registered under Section 13 of the Public Gambling Act, 1867 and the vehicle Tata Sumo Gold bearing Registration No.C.G.15 CZ 1714 was seized. Thereafter, the charge sheet was filed and the application when was filed for interim custody of the vehicle, the same was dismissed on the ground that the goods which are seized are liable to be confiscated according to Section 8 of the Public Gambling Act, 1867.

3. Learned counsel for the petitioner would submit that the order is absolutely against the law as Section 8 of the Public Gambling Act would come into play only after conviction, which cannot be implemented and press into motion when the custody of the vehicle is sought for during the trial and there was no certainty as the trial would complete. Till then if the vehicle is kept under the custody it will lose its motor-ability and subject to natural decay. Considering the same, the vehicle may be handed over to the petitioner.
4. Per contra, learned State counsel opposes the argument and would submit the order of the Court below is well merited which do not call for any interference.
5. Perused Section 8 of the Public Gambling Act, 1867, which reads as under :

“8. On conviction for keeping a gaming-house, instruments of gaming to be destroyed. - On conviction of any person for keeping or using any such common gaming-house, or being present therein for the purpose of gaming, the convicting Magistrate may order all the instruments of gaming found therein to be destroyed, and may also order all or any of the securities for money and other articles seized, not being instruments of gaming, to be sold and converted into money, and the proceeds thereof with all moneys seized therein to be forfeited or, in his discretion, may order any part thereof to be returned to the persons appearing to have severally thereunto entitled.”

6. The order finds a reference of Section 8 of the Public Gaming Act, 1867, which says on conviction for keeping a gaming-house, instruments of gaming to be destroyed. Thereby, reading of Section 8 would show that the section would come into play after

conviction is arrived at. The presumption cannot be drawn during pendency of the proceeding.

7. It is matter of common knowledge or experience that as and when the vehicles are seized and kept in police stations, not only do they occupy substantial space in police stations, but upon being kept in open are also prone to fast natural decay on account of whether conditions. Even a good maintained vehicle loses its road worthiness if it is kept stationary in the police station for more than two weeks. Apart from the above, it is also matter of common knowledge that several valuable and costly parts of the said vehicle are either gets junked or are cannibalized so that the vehicles become unworthy of being driven on road. Therefore, no purpose will be served to keep the vehicle in police custody for a long time as it will turn junk and also occupy the substantial place of police station.
8. Considering the entirety of the facts, the reason assigned by the learned Court below in the impugned order dated 23.11.2017 cannot be appreciated.
9. Under the circumstances, following the principles laid down in **(2010) 6 SCC 768** and **(2002) 10 SCC 283**, I am inclined to release the vehicle in favour of the applicant. Accordingly, the vehicle shall be released 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 vehicle would be produced if required at the time of trial.
 - (iii) Proper security i.e., personal bond of Rs.7 Lacs and like sum of surety be obtained before release of vehicle.

10. In view of foregoing discussion, the petition succeeds and is allowed.

Sd/-
(Goutam Bhaduri)
Judge

Ashok