

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 339 of 2018**

Indramani Sahu s/o Kripa Sindhu Sahu, aged about 64 years R/o Plot No. 168, Govind Prasad Bomikhal, Bhuneshwar Khurd (Odissa).

----Applicant**Versus**

State of Chhattisgarh, Through: District Magistrate, Bilaspur, District (Revenue & Civil)- Bilaspur (C.G.).

---- Respondent

For Applicant	:	Mr. Anand Kesharwani, Advocate
For Respondent	:	Mr. U.K.S. Chandel, PL

Hon'ble Shri Justice Arvind Singh Chandel**Order on Board****26/07/2018**

1. By way of the present Criminal Revision filed under Section 397 read with 401 of Cr.P.C., the applicant has challenged the order dated 15/01/2018 passed by the learned Special Judge (NDPS Act, 1985), Bilaspur in crime No. 393/2017 for the offence under Section 20 (b) of the NDPS Act, whereby, the application of the applicant for releasing the vehicle on Supurdnama was rejected.
2. Brief facts of the case are on 10/12/2017 on the basis of secret information received from the informant, a raid was conducted and vehicle bearing registration No. OD 2 Y 1987 was searched and one quintile 28 Kg of Ganja was found in the said vehicle, which was also seized from the possession of accused- Nayan Kumar, Babuli Kumar and Ashok Kumar. The said vehicle was seized.

3. Learned counsel for the applicant submits that the applicant is the registered owner of the said vehicle. Accused- Babuli kumar Pradhan was the driver of the said vehicle and was driving the said vehicle since 8 months. He further submits that the driver had taken the vehicle 5 days ago without informing him, therefore, the applicant had lodged an report in this regard. He further submits that the applicant did not have any knowledge regarding transportation of above Ganja. No confiscation proceeding is going on regarding the said vehicle. The seized vehicle of which the applicant is registered owner is lying idle since 10/11/2017 and no fruitful purpose would be served if the vehicle remains idle in the custody of the police personnels exposed to the extreme weather conditions. The vehicle would get decayed day by day and would further deteriorate by passage of time to the extent that it would become unusable after some time and therefore in the interest of justice the vehicle may be released.
4. Learned counsel appearing on behalf of the State opposes the prayer.
5. The Supreme Court in ***Sunderbhai Ambalal Desai v. State of Gujrat, 2002 (10) SCC 283***, has laid down the guiding principles for releasing the vehicle seized by the police. For ready reference paragraphs 7 and 17 of the said judgment are reproduced below:-

“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 of 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.”

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17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the polices for a long period. 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. This can be done pending hearing of applications for return of such vehicles.”

6. Similar stand has also been taken by the Supreme Court recently in the case of ***Multani Hanifbhai Kalubhai v. State of Gujrat & Another, 2013 (3) SCC 240***, wherein the Supreme Court has expressed that it is not advisable to keep the seized vehicle in the police station in open condition which is prone to natural decay on account of weather conditions for a long period.
7. In view of above, considering the fact that the applicant is the registered owner of the seized vehicle and the alleged Ganja has not been seized from him, and also taking note of the fact that the confiscation proceeding has not been started, no useful purpose would be served if the seized vehicle is allowed to get exposed in the extreme weather conditions at the police station. On the contrary, if the vehicle can be released to the applicant subject to certain conditions he can use it so that the vehicle does not become junk after some time.
8. For the foregoing reasons, the impugned order rejecting the application for releasing of the seized vehicle on Supurdnama is not proper and the same is set-aside. It is directed that the seized vehicle belonging to the

applicant i.e. Innova bearing registration No. OD02 Y 1987 be released to the applicant on Supurdnama upon his furnishing an bond of Rs. 15,00,000/- with one surety to the satisfaction of the concerned Court below for return of the said vehicle, if required at any point of time. In the bond he shall give an undertaking that he shall not change the ownership of the vehicle nor shall he change the colour of the vehicle neither shall he create a third party right or interest over the said vehicle. He shall also undertake that he shall produce the vehicle as and when required by the prosecution during the course of investigation, trial and even at the appellate state. He shall further undertake to produce the vehicle to any competent authority under different statutes as and when required.

9. With the aforesaid observations, the Criminal Revision is allowed.

Sd/-

(Arvind Singh Chandel)
Judge