

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 452 of 2018**

Hasmukh Nag S/o Puran Nag Yadav, Aged about 32 years, R/o Ward No. 14
Kalika Nagar Tifra, P.S. Sirgitti District- Bilaspur (C.G.).

----Applicant**Versus**

1. State of Chhattisgarh, Through: P.S. Chakarbhatta, District- Bilaspur (C.G.).
 2. Kheti Nag S/o Puran Nag, aged about 27 years R/o Rengali P.S. Titlagarh, District Balangi Odisha.
 3. Ishwar Patel @ Kenda, S/o Jugeshwar Patel, age about 40 years R/o Harishankar Road, Tallipara, P.S. Khaprakhol, District- Balangi Odisha, presently- near Kali Mandir Tifra, P.S. Sirgitti District- Bilaspur (C.G.).
- At present Respondent No. 2 & 3 are in Central Jail, Bilaspur (C.G.).

---- Respondents

For Applicant	:	Mr. Rajesh Jain, Advocate
For Respondent	:	Mr. U.K.S. Chandel, PL

Hon'ble Shri Justice Arvind Singh Chandel**Order on Board****18/07/2018**

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 28/03/2018 passed by the Special Judge (NDPS), Bilaspur in Special Criminal Case No. 5/2018 for the offence under Section 20 (b) (ii-C) 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 that vehicle bearing registration No. 20 (b) (ii-C) was seized in crime No. 397/2017 at Police Station, Chakarbhatta for

the offence punishable under the aforementioned section. It is alleged that 36 Kg of illegal Ganja was transporting through the said vehicle.

3. Learned counsel for the applicant submits that the alleged Ganja was carrying by the driver and helper, which was not in the knowledge of the applicant. The applicant is the only owner of the vehicle, therefore, he has been falsely implicated however, the seizure was not made from the applicant. He further submits the applicant is the owner of the vehicle which was alleged to be involved in commission of crime. No confiscation proceeding is going on regarding the said vehicle. The seized vehicle of which the applicant is registered owner is lying idle 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. Metador bearing registration No. CG10 Y 5176 be released to the applicant on Supurdnama upon his furnishing an bond of Rs. 10,00,000/- 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. So far as surety is concerned, it shall be equal to the present day value of the vehicle seized or to the satisfaction of the concerned Trial Court.

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

Sd/-

(Arvind Singh Chandel)
Judge