

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 491 of 2018**

Nawaz Khan S/o Shri Abdul Sattar, Aged about 25 years, R/o Near Madani Chowk, Sanjay Nagar, Raipur, P.S. Tikrapara, District- Raipur (C.G.).

----Applicant

Versus

State of Chhattisgarh, through the Station House Officer, Police Station, Patewa, District Mahasamund (C.G.).

---- Respondent

For Applicant	:	Mr. Vivek Kumar Agrawal, Advocate
For Respondent	:	Mr. Sameer Behar, Panel Lawyer

Hon'ble Shri Justice Arvind Singh Chandel**Order on Board**

17/05/2018

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 07/03/2018 passed by Special Judge (NDPS), Mahasamund in Miscellaneous Criminal Case No. H-14/2018 for the offence under Section 20(b) of the NDPS Act, 1985 whereby, the application of the applicant for releasing the vehicle bearing no. CG04 LY 8201 on Supurdnama was rejected.
2. Brief facts of the case are that on 14/12/2017, offending vehicle was seized by the police station- Patewa, Mahasamund for the alleged offence punishable under Section 20 (b) of the NDPS Act in crime No. 196/2017 alleging that the accused persons namely Salam Khan and Santosh Kumar Sahu were transporting illegal Ganja, weighted around 12.7 Kg in the said scooter, thereby crime was registered.

3. Learned counsel for the applicant submits that 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. He further submits that accused Salam Khan is the relative of the applicant and he took the scooter from the applicant. The applicant was not involved in the alleged crime. He further submits that 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 claim of the applicant on the ground that the nature of offence said to have been committed in which the seized vehicle is involved is quite serious in nature and that the impugned order rejecting the application for release of the seized vehicle on Supurdnama does not warrant any interference by this Court as the reasons assigned for rejecting the said application are just and proper.
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 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. CG04 LY 8201 be released to the applicant upon his furnishing an appropriate bond and guarantee 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 Rs. 20,000/- to the satisfaction of the concerned Trial Court.

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

Sd/-

(Arvind Singh Chandel)
Judge