

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Revision No. 788 of 2018**

Hori Lal Yadav S/o Lok Nath Yadav, aged about 30 years, R/o village Bargaon, P.S. Berla, District- Bemetara (C.G.), through power of Attorney Holder Smt. Jamuna Bai, aged about 50 years, wife of Loknath Yadav, R/o Village- Bargaon, P.S and Tahsil Berla, District- Bemetara (C.G.).

----Applicant**Versus**

State of Chhattisgarh, Through: the Police Station Berla, District- Bemetara (C.G.).

---- Respondent

For Applicant	:	Mr. Uttam Pandey, Advocate
For Respondent	:	Mr. Satish Gupta, Govt. Advocate

Hon'ble Shri Justice Arvind Singh Chandel**Order on Board****03/08/2018**

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 11/05/2018 passed by the Additional Sessions Judge in Special Trial No. 38/2017 whereby, the application of the applicant for releasing the vehicle on Supurdnama was rejected.
2. Brief facts of the case are that on the date of incident, the present applicant who is the register owner of the vehicle bearing registration No. CG13 UD 3979, along with other co-accused persons reached the place of incident in the said vehicle. It was alleged that he along with other co-accused persons committed *marpeet* and *loot* of ornaments from the prosecutrix and her companions. Even rape was committed inside the

vehicle. The police has registered crime No. 224/2017 under Sections 342, 376, 395 and 397 of IPC and the applicant was arrested on 11/08/2017. Since the applicant is in custody since 11/08/2017, therefore, he moved an application for releasing the vehicle on Supurdnama through his power of attorney i.e. mother, but the learned trial Court as well as Appellate Court has rejected the same on the ground that the vehicle in question is the subject matter of the offence and the applicant has not taken permission to execute the power of attorney in favour of his mother.

3. Learned counsel for the applicant submits that the applicant is the register owner of the said vehicle. The vehicle was seized on 11/07/2017 since then, the vehicle is standing in the police station. He further submits that the power of attorney has been executed in favour of his mother and now, at this juncture, it should not be seen that before executing the power of attorney permission was taken or not. If any permission was required and he had not taken that at that time, which was later on taken, then on that basis, the vehicle cannot be denied to be released on Supurdnama. He further submits that the vehicle is machinery, therefore, the same may be released on Supurdnama to the mother of the applicant (in whose name power of attorney has been executed).
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 and considering the fact and circumstances of the case that the applicant is in custody since 11/08/2017 and the power of attorney has been executed in favour of his mother further considering that 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 mother of the applicant (in whose favour power of attorney has been executed) subject to certain

conditions she 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. Maruti Ertiga bearing registration No. CG12 UD 3979 be released to the mother of the applicant (in whose favour power of attorney has been executed) on Supurdnama upon her furnishing an bond of Rs. 12,00,000/- with one surety in the like sum to the satisfaction of the concerned Court below for return of the said vehicle, if required at any point of time. In the bond she shall give an undertaking that she shall not change the ownership of the vehicle nor shall she change the colour of the vehicle neither shall she create a third party right or interest over the said vehicle. She shall also undertake that she shall produce the vehicle as and when required by the prosecution during the course of investigation, trial and even at the appellate state. She 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