

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 566 of 2019**

- Mangal Singh S/o Pyare Lal Aged About 60 Years R/o Jarahi (Back Side Of Shiv Temple) Police Station Bhatgaon, District Surajpur, Chhattisgarh., District : Surajpur, Chhattisgarh

---- Applicant**Versus**

- State Of Chhattisgarh Through Police Station Chandoura District Surajpur Chhattisgarh., District : Surajpur, Chhattisgarh

----Respondent

For Applicant	: Shri A.N. Pandey, Advocate
For Respondent No.2	: Shri Anurag Verma, Panel Lawyer

Hon'ble Smt. Justice Rajani Dubey**Order On Board****21.8.2019**

1. Heard on admission.
2. This revision is preferred against the order dated 15.1.2019, passed by the Chief Judicial Magistrate, Surajpur, District Surajpur(CG) in Criminal Case No. 1778/2018, whereby the application filed by the applicant under Section 451 Cr.P.C. for Supurdnama of the motorcycle -Bajaj Platina has been rejected, which was involved in the offence under Section 34 (2) of the C.G. Excise Act.
3. As per the prosecution case, on 10.10.2018 motorcycle – Bajaj Platina bearing registration No. CG/15/CJ 6764 was seized in connection with Crime No.60/2018 and 8 litres of Mahua liquor

was seized from the possession of the applicant. The offence was registered under Section 34(2) of the C.G. Excise Act and the applicant was arrested and the vehicle was also seized. The application filed by the applicant for Supurdnama of the vehicle has been rejected by the trial court vide order dated 15.1.2019. Hence, this revision.

4. Learned counsel for the applicant submits that the order passed by the trial Court is perverse and contrary to law. The applicant is the registered owner of the seized motorcycle and there is no possibility that the applicant will destroy the motorcycle after receiving it on Supurdnama. The case is pending before the trial court and trial will take some time, therefore, if the seized motorcycle is kept in the custody of Police in stationary condition then the part of the motorcycle will be spoiled and it will not be usable in the future. He submits that the learned trial court has rejected the application for Supurdnama without considering the law laid down by the Hon'ble Apex Court in the matter of **Sundar Bhai Amba Bhai Vs. State of Gujarat, AIR 2003 SCC.**
5. Learned counsel for the State opposes the arguments.
6. Heard learned counsel for the parties and perused the order of the court below.
7. The trial court has rejected the application of the applicant on the ground that the property is seized under Section 34(2) of the C.G. Excise Act and as per police report confiscation proceedings of the seized vehicle are going on.

8. The Honble Apex Court in the matters of **General Insurance Council and others Vs. State of Andhra Pradesh and others, (2010) 6 SCC 768** and **Sunderbhai Ambalal Desai Vs. State of Gujarat, (2002) 10 SCC 283**, has held that if the vehicle is kept in the police station it must be occupying space or is prone to cause natural decay and may lose its road worthiness when kept in stationary position. This court in **CRMP No. 2344 of 2018** has also passed the order dated 8.3.2019 on same line. Therefore, the order of rejection of application for interim custody cannot be allowed to remain. Consequently, applying the same principle, it is directed that the vehicle be released in favour of the applicant by way of interim measure, if the confiscation proceedings have not been concluded till date of production of this order.
9. In the result, order dated 15.1.2019 is quashed and the revision is allowed. The vehicle is directed to be released to the applicant on the following conditions:
 - I. Applicant shall execute a bond in sum of Rs.50,000/- with one surety of Rs.50,000/- to the satisfaction of the concerned court.
 - II. Applicant must satisfy the Court that he is the registered owner of the offending vehicle.
 - III. The applicant shall not transfer or dispose of the offending vehicle to anyone else and shall not make any change in its body, colour or engine. It is needless to say that make, colour, chassis number, and engine number of the offending vehicle shall be furnished by the petitioner before the trial court with an

undertaking that no damage shall be caused or no part of the vehicle be substituted.

- IV. The applicant shall also file an undertaking before the trial Court that the offending vehicle shall not be used for commission of offence; and before giving interim custody of the offending vehicle to the applicant, three coloured photographs of cabinet size from different angles clearly indicating registration number and other particulars of the vehicle shall be kept on file. The expenses for the photographs shall be borne by the applicant.
- V. The applicant shall produce vehicle either before this Court or before Collector or such authorities as it may be directed, on his own expenses.

10. Thus, the revision is allowed.

Sd/

(Rajani Dubey)
JUDGE