

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CRR No. 1159 of 2019**

- Devpati Yadav S/o Shri Rambaksh Yadav Aged About 55 Years R/o Manpur, Police Station Udaypur, District Surguja, Chhattisgarh.

---- Applicant**Versus**

- State Of Chhattisgarh, Through : The Police Station Udaypur, District Surguja, Chhattisgarh.

---- Respondent

For Applicant	: Shri Sumit Singh Rathore, Advocate
For Respondent/State	: Shri Akhtar Hussain, Panel Lawyer

Hon'ble Smt. Justice Rajani Dubey**Order On Board****03.10.2019**

1. Heard on I. A. No. 01/2019, for condonation of delay in filing the revision.
2. On due consideration I. A. No. 01/2019 is allowed and delay in filing the Criminal Revision is condoned.
3. Also heard on admission
4. This revision is preferred against the order dated 31.12.2018, passed by the Special Judge (Atrocities) Ambikapur, District Surguja (CG) in Criminal Case No. 17/2018, whereby the application filed by the applicant under Section 451 of Cr.P.C. for Supurdnama of the motorcycle - Honda Shine has been rejected, which was involved in the alleged incident.

5. As per the prosecution case, on 01.09.2018, the applicant's son Vijay Kumar Yadav intercepted deceased Sanjeeta Toppo and assaulted her on right ear as a result of which she fell down and died. The applicant's son namely Vijay Yadav has been arrested for the commission of crime under Section 302 of IPC in the Crime No. 82/2018 and during investigation unnumbered motorcycle Honda Shine having chassis No.MI4JC734MH8015696 allegedly belonging to the applicant's son seized by the police. The application filed by the applicant for Supurdnama of the vehicle has been rejected by the trial court vide order dated 31.12.2018. Hence, this revision.
6. Learned counsel for the applicant submits that the order passed by the trial Court is perverse and contrary to law. The applicant's son is the registered owner of the seized motorcycle and there is no possibility that the applicant's son 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 **Sunderbhai Ambalal Desai Vs. State of Gujrat**¹.
7. Learned counsel for the State opposes the arguments.

¹2002 (10) SCC 283

8. Heard learned counsel for the parties and perused the order of the court below.
9. The trial court has rejected the application of the applicant on the ground that the applicant's son used the motorcycle in question with intent to cause death of deceased Sanjeet Toppo.
10. The Hon'ble 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.
11. In the result, order dated 31.12.2018 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.80,000/- with one surety of the like amount to the satisfaction of the concerned court.

- II. Applicant must satisfy the Court that his son Vijay Kumar Yadav 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 trial Court or before Collector or such authorities as it may be directed, on his own expenses.

12. Thus, the revision is allowed.

Sd/-
(Rajani Dubey)
JUDGE