

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.24921 of 2020

Arising Out of PS. Case No.-14 Year-2019 Thana- MAHILA P.S District- West Champaran

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Priyanka Devi W/o Nirmal Yadav R/o Barwat Sena, P.S.- Bettiah Muffasil,
District- West Champaran.

... .. Petitioner

Versus

The State of Bihar

... .. Opposite Party

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Appearance :

For the Petitioner/s : Mr. Dhannjay Kumar No 2, Adv.

For the Opposite Party/s : Mr. Ashok Kumar Singh, APP

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CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date: 25-11-2020

Heard learned counsel for the petitioner and learned
Additional Public Prosecutor for the State via video conferencing.

2. By way of the present application preferred under Section 482 of the Code of Criminal Procedure, 1973 (for short 'Cr.P.C.'), the petitioner seeks quashing of the order dated 17.02.2020 passed by the learned 1st Additional Sessions Judge-cum-Special Judge (SC/ST/POCSO), Bettiah, West Champaran, in Mahila P.S. Case No. 14 of 2019 registered under Sections 376D of the Indian Penal Code and Sections 4, 6 and 17 of Protection of Children from Sexual Offences Act whereby he has rejected the application dated 27.11.2019 filed by the petitioner for release of seized vehicle bearing Registration No. BR22PA-0931 on the ground that the seized vehicle is a material exhibit in connection



with a case of serious nature and the investigation of the case is still incomplete.

3. Mahila P.S. Case No. 14 of 2019 was registered on the basis of written report submitted by one P.K. wherein she has alleged that she is aged 18 years. In the previous evening on 13.09.2019 at about 07:30 p.m. while she was going to the house of her sister-in-law and when she reached near Mithi Tola, a four-wheeler vehicle suddenly stopped and by the time she could understand anything, two persons forcibly lifted her and put her inside the vehicle. She saw that four persons concealing their faces with *gamacha* were already sitting inside the vehicle. She tried to rescue herself and in that process, she could identify them as Akash Kumar, Sajan Kumar, Dinanath Kumar and Kundan Kumar. They ravished her inside the vehicle one after another and threatened her not to speak about the incident otherwise her family members would face dire consequence.

4. On completion of investigation, the police submitted charge-sheet against accused Akash Kumar, Sajan Kumar, Kundan Kumar, Raj Kumar, Anshu Kumar, Dinanath Kumar and Deepak Kumar Verma.



5. The petitioner is neither named in the first information report nor her name transpired in course of investigation nor she has been sent up by the police for trial.

6. Learned counsel for the petitioner submitted that not only the petitioner, her family members are also not involved in the case. He contended that the petitioner is the registered owner of the vehicle in question. It was her driver, who has been made an accused in this case and is facing trial. He had committed the offence without any knowledge of the petitioner or her family members.

7. Since the vehicle in question was seized by the police in course of investigation, the petitioner filed an application on 27.11.2019 for its release before the court below. She filed all the relevant documents to support her contention that she is registered owner of the vehicle and there is no other claimant of the vehicle. She also took a plea that the vehicle is lying under an open sky and is being damaged every day. She undertook that as and when there would be necessity of the vehicle, she would produce the same before the court in course of trial.

8. The court below considered the submissions of the petitioner and called for a report from the concerned police station.



9. The report submitted by the police reflected that the seized vehicle is a material exhibit and the investigation is not complete.

10. After going through the report and hearing the parties, the court below dismissed the application preferred on behalf of the petitioner vide impugned order dated 17.02.2020.

11. Learned counsel appearing for the petitioner submitted that while passing the order impugned, the court below failed to consider the ratio laid down by the Hon'ble Supreme Court in **Smt. Basava Kom Dyamogouda Patil vs. State of Mysore and another [(1977) 4 SCC 358]**, **Sunderbhai Ambalal Desai vs. State of Gujarat [(2002) 10 SCC 283]**, **Sunderbhai Ambalal Desai vs. State of Gujarat [(2002) 10 SCC 290]** and **General Insurance Council and Ors vs. State of Andhra Pradesh & Ors. [(2010) 6 SCC 768]** in which the Supreme Court has held that the photographs can be used as a secondary evidence during trial and it is not necessary to produce the seized property at the time of trial. He contended that a similar view has been expressed by this Court in the matter of **Shyam Lohia & Anr. Vs. State of Bihar**, since reported in **(2016) 1 PLJR 556**.

12. Learned counsel appearing for the State has tried to defend the impugned order. He submitted that there is no error in



the order passed by the court below. According to him, since the offence is serious in nature and the seized vehicle is a material exhibit which has been used in the commission of the offence, the court below was absolutely right in rejecting the prayer for release of the vehicle.

13. Having heard the parties and perused the judgment passed by the Supreme Court and this Court as relied upon by the learned counsel for the petitioner, I am of the opinion that the order impugned cannot be sustained. In all the judgments noted above, scope of the Sections 451 and 457 of the Cr.P.C. has been considered and it has been held that the powers conferred under Section 451 of the Cr.P.C. should be exercised expeditiously and judiciously. It has also been held that in case vehicle is kept in an open space for a long time, the same would cause irreparable financial loss to the owner of the property.

14. Apparently, the court below has completely failed to appreciate the law laid down by the Supreme Court in the aforesaid cases and has passed a cryptic and mechanical order only on the basis of the report submitted by the police.

15. Accordingly, the order dated 17.02.2020 passed by the learned 1st Additional Sessions Judge-cum-Special Judge (SC/ST/POCSO), Bettiah, West Champaran, in Mahila P.S. Case



No. 14 of 2019 is set aside. The matter is remanded back to the court below to consider the application of the petitioner afresh in the light of the judgments noted above and pass appropriate order in accordance with law within three weeks from the date of receipt/production of a copy of the judgment.

16. With the aforesaid observations and direction, the application is allowed.

17. Since the court proceedings are being conducted through virtual mode and normal court functioning has not been restored till date, it is considered appropriate to adopt the following procedure for communication of the present order:-

- (i) The order, which has been dictated during the course of proceeding of the virtual court, shall be communicated to me on my e-mail by the Sr. Secretary.
- (ii) The corrected copy of the order shall be transmitted by me from my e-mail id to the Sr. Secretary, which shall be treated to be an authentic copy of the order passed by this Court in the present proceeding.
- (iii) Hard copy of the order duly signed by me shall be preserved in my residential office for documentation and future use, if any.



(iv) Let steps be taken by the Sr. Secretary/registry for up-loading of the present order without compromising with the norms of social distancing.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	02-12-2020
Transmission Date	02-12-2020

