

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Criminal Misc. Petition No.857 of 2020**

- Vishal Kumar Chandeliya Son of Santosh Kumar Chandeliya, aged about 35 years, R/o. House No.212, Zonal Market, Sector 10, Bhilai, Distt. Durg (CG)

---- Petitioner

Versus

- State Of Chhattisgarh Through Police Station Pulgaon Distt. Durg (CG)

---Respondent

For Petitioner	:Mr. Pushpendra Kumar Patel, Advocate
For Respondent	:Ms. Veena Nair, Dy. Advocate General

Hon'ble Shri Justice Sanjay K. Agrawal**Order on Board****14.7.2020**

1. Proceedings of this matter have been taken up through Video Conferencing.
2. The petitioner is the registered owner of vehicle Mahindra Quanto bearing registration No.CG 07 AL 4477. The said vehicle has been seized by Police Station Pulgaon in connection with offence under Sections 302, 201 & 120B of the Indian Penal Code .
3. The petitioner made an application under Section 457 of the Code of Criminal Procedure (hereinafter, 'the Code') for interim custody of the vehicle in question, which has been rejected by the trial Court

against which the instant petition under Section 482 of the Code has been preferred.

4. Learned counsel for the petitioner submits that initiation of confiscation proceedings cannot be a ground to detain the vehicle in police custody in light of the decision of the Supreme Court in the matter of Sunderbhai Ambalal Desai v. State of Gujarat¹.

5. On the other hand, learned counsel for the State would support the impugned order and oppose the aforesaid submission made by learned counsel for the petitioner.

6. I have heard learned counsel appearing for the parties, considered their rival submissions made herein-above and went through the records with utmost circumspection.

7. The Supreme Court in the matter of *Sunderbhai Ambalal Desai (supra)* with regard to grant of custody of the vehicle, has held as under:

“15. Learned Senior Counsel Mr. Dholakia, appearing for the State of Gujarat further submitted that at present in the police station premises, a number of vehicles are kept unattended and vehicles become junk day by day. It is his contention that appropriate directions should be given to the Magistrates who are dealing with such questions to hand over such vehicles to their owners or to the person from whom the said vehicles are seized by taking appropriate bond and guarantee for the return of the said vehicles if required by the court at any point of time.

¹ 2002(10)SCC 283

16. However, the learned counsel appearing for the petitioners submitted that this question of handing over the vehicle to the person from whom it is seized or to its true owner is always a matter of litigation and a lot of arguments are advanced by the persons concerned.

17. In our view, whatever be the situation, it is of no use to keep such seized vehicles at the police stations 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 the applications for return of such vehicles.

18. In case where the vehicle is not claimed by the accused, owner, or the insurance company or by a third person, then such vehicle may be ordered to be auctioned by the court. If the said vehicle is insured with the insurance company then the insurance company be informed by the court to take possession of the vehicle which is not claimed by the owner or a third person. If the insurance company fails to take possession, the vehicles may be sold as per the direction of the court. The court would pass such order within a period of six months from the date of production of the said vehicle before the court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared.

19. For articles such as seized liquor also, prompt action should be taken in disposing of it after preparing necessary panchnama. If sample is required to be taken, sample may be kept properly after sending it to the Chemical Analyser, if required. But in no case, large quantity of liquor should be

stored at the police station. No purpose is served by such storing.

20. Similarly for the narcotic drugs also, for its identification, procedure under Section 451 CrPC should be followed of recording evidence and disposal. Its identity could be on the basis of evidence recorded by the Magistrate. Samples also should be sent immediately to the Chemical Analyser so that subsequently, a contention may not be raised that the article which was seized was not the same.

21. However, these powers are to be exercised by the Magistrate concerned. We hope and trust that the Magistrate concerned would take immediate action for seeing that powers under Section 451 CrPC are properly and promptly exercised and articles are not kept for a long time at the police station, in any case, for not more than fifteen days to one month. This object can also be achieved if there is proper supervision by the Registry of the High Court concerned in seeing that the rules framed by the High Court with regard to such articles are implemented properly.”

8. It appears that while rejecting the application by the trial Court, the principle of law laid down by the Supreme Court in *Sunderbhai Ambalal Desai (supra)* has not been followed and the vehicle is unnecessarily detained.

9. Accordingly, the impugned order of the trial Court is hereby set aside. The matter is remitted back to the trial Court to consider it afresh in accordance with law in the light of the aforesaid decision rendered by the Supreme Court in *Sunderbhai Ambalal Desai (supra)*,

within three weeks from the date of receipt of a copy of this order.

10. With the aforesaid observation, the present petition stands finally disposed of.

Sd/-

(Sanjay K. Agrawal)

JUDGE

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