

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.871 of 2021

Arising Out of PS. Case No.-35 Year-2020 Thana- TARARI District- Bhojpur

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KAMENDRA KUMAR SINGH Son of Late Rajbans Singh Resident of
Village - Sara, P.S.- Tarari, Dist.- Bhojpur

... .. Petitioner

Versus

1. The State of Bihar
2. The Officer in charge, Tarari police station Dist. - Bhojpur. Bihar

... .. Respondents

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Appearance :

For the Petitioner/s : Mr.Rajani Ranjan Pd. Singh, Advocate
For the Respondent/s : Mr.Kumar Pankaj, AC to SC-5

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CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 27-09-2021 Heard learned counsel for the petitioner and Mr.
Kumar Pankaj, learned AC to SC-5 for the State.

The petitioner in the present case is seeking setting aside of the order dated 19.01.2021 passed in N.D.P.S. Case No. 07 of 2020 by which the learned Sessions Judge, Bhojpur at Ara has rejected the prayer of the petitioner to release the seized motorcycle bearing no. BR03Z8255.

Learned counsel for the petitioner submits that on a bare perusal of the impugned order, it would appear that learned counsel for the petitioner was not present to press the said application and in his absence the learned Sessions Judge took note of the submissions of learned Spl.P.P. and without calling for a report from the investigation officer the learned Sessions Judge proceeded to pass an order on the release of the vehicle



which has resulted in gross injustice to the petitioner.

Learned counsel further submits that the alleged contraband (ganja) is said to be One Kilogram recovered from the possession of the petitioner and the petitioner has already been granted bail in the said case.

Learned counsel further submits that the Sub-Inspector of Police, Tarari Police Station has submitted his report dated 03.06.2021 in which he has categorically stated that the vehicle is lying in the premises of the Police Station and continued seizure of the said motorcycle in course of investigation is not required and if the Court releases the said motorcycle, he would have no objection to the same.

Learned AC to SC-5 submits that the learned Sessions Judge has rejected the application of the petitioner for release of the motorcycle when no one appeared for the petitioner on repeated calls. However, in view of the report of the investigating officer as contained in Annexure '3', learned AC to SC-5 has no objection if this Court considers setting aside of the impugned order and release of the motorcycle at this stage.

Considering the facts and circumstances of the case and the materials placed on the record, this Court is of the considered opinion that even as no one was appearing on behalf



of the petitioner to press the petition at first instance the learned Sessions Judge would have either rejected the said application without going into the merit of the contentions or would have called for a report from the investigating officer but in this case the application has been rejected taking into consideration that the ganja measuring One Kilogram in quantity has been recovered from the conscious possession of the petitioner and that is the only ground indicated for rejection of the release petition. This, according to this Court, amounts to a jurisdictional error committed by the learned Sessions Judge and the order impugned is liable to be set aside.

The impugned order is, thus, set aside. Considering that if this Court directs the petitioner to again file a fresh application in the learned court below or to press his application in the learned court below, it would be nothing but burdening the petitioner as well as the whole system and the Court having gone through the report of the I.O. (Annexure '3') and taking note of the submissions of learned AC to SC-5, this Court thinks it just and proper to direct release of the motorcycle bearing No. BR03Z8255. The release application will be taken to have been allowed and the vehicle in question shall be released within a period of one week on the condition that during pendency of the



case the petitioner shall not deal with the vehicle in question and he shall not transfer or otherwise encumber and further as and when required the vehicle shall be produced. The vehicle shall be released on the personal bond of the petitioner to the extent of the value of Rs.50,000/- (Rupees Fifty Thousand/-).

The application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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Note: The ordersheet duly signed has been attached with the record. However, in view of the present arrangements, during Pandemic period all concerned shall act on the basis of the copy of the order uploaded on the High Court website under the heading 'Judicial Orders Passed During The Pandemic Period'.

