

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**CR.R. No. 658 of 2020**

Jeevan Kumar S/o Videshwar Patel aged about 40 Years R/o
Village Pashupatipur, Police Chowki Wadrafnagar, Police
Station Basantpur, District Balrampur-Ramanujganj CG

---- Applicant

Versus

State of Chhattisgarh through Police Station Raghunath Nagar,
District Balrampur-Ramanujganj CG

----Non-applicant

For applicant : Mr. Pawan K. Kashyap, Adv.
For respondent : Mr. Devesh Verma, Govt. Adv.

Hon'ble Shri Justice N.K. Chandravanshi**Order on Board****5-10-2021**

1. This criminal revision has been preferred by the applicant against order dated 18-8-2020 passed by the learned Special Judge (NDPS Act), Balrampur, at Ramanujganj (CG) in Cri. M.J.C. No. 18/2020 (Jivan Kumar -v- State of CG) by which the application filed by the applicant under Section 457 of the Criminal Procedure Code, 1973 (in short 'Cr.P.C.') for handing over the vehicle Honda Shine motorcycle bearing registration No. CG 15 CU 1133 (in short 'vehicle in question') to him on supurdnama has been rejected.

2. Brief facts of the case are that on 11-4-2020, on the basis of information received from the informant that one Mukesh Patel son of Jivan Patel is carrying contraband drugs in a motorcycle, police stopped the motorcycle and seized 16 bottles of Codeine Phosphate Chlorpheniramine Maleate - Elturex cough syrup, each bottle containing 100 ml., kept in the dicky of the vehicle in question, that vehicle was also seized, therefore, Crime No. 32/2020 was registered at PS Raghunath Nagar, Distt. Balrampur-Ramanujganj for offence under Section 21(a) of the Narcotic Drugs and Psychotropic Substance Act (in brief 'NDPS Act').

3. Learned counsel for the applicant submits that applicant is registered owner of the vehicle in question. He further submits that

the vehicle in question is lying idle in open place in the premises of police station since long and no fruitful purpose would be served if the vehicle remains in such condition in the premises of police station. If the vehicle is not handed over to the applicant, it would get decayed day by day and it would become waste after some times, therefore, the vehicle in question may be released on supurdnama and handed over to the applicant.

4. On the other hand, learned counsel appearing for the State opposed the arguments advanced by counsel for the applicant submitting that the vehicle was used in carrying contraband drugs. Therefore, the Court below has rightly rejected the application vide impugned order which does not call for any interference of this Court.

5. I have heard learned counsel for the parties and perused the material available on record and the impugned order.

6. The Supreme Court in **Sunderbhai Ambalal Desai -v- State of Gujrat**, [2002 (10) SCC 283], has laid down the guiding principles for releasing the vehicle seized by the police. For ready reference paragraphs 7 and 17 of the said judgment are reproduced below :-

“7. In our view, the powers under Section 451 CrPC should be exercised expeditiously and judiciously. It would serve various purposes, namely:

1. owner of the article would not suffer because of its remaining unused or by its misappropriation;
2. court or the police would not be required to keep the article in safe custody;
3. if the proper panchnama before handing over possession of the article is prepared, that can be used in evidence instead of its production before the court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and

4. this jurisdiction of the court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.

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 applications for return of such vehicles.”

7. Similar stand has also been taken by the Supreme Court in the case of **Multani Hanifbhai Kalubhai -v- State of Gujrat and another**, [2013(3) SCC 240], wherein the Supreme Court has expressed that it is not advisable to keep the seized vehicle in the police station in open condition which is prone to natural decay on account of weather conditions for a long period.

8. In the instant case, the applicant is said to be registered owner of the vehicle in question. It also seems that final disposal of the case will not take place in near future and keeping the vehicle in question in idle condition will deteriorate the vehicle, on the contrary, if the vehicle is released with certain conditions, it can be used and it will not become junk.

9. Accordingly, the impugned order dated 18-8-2020 passed by learned Special Judge (NDPS Act), in Criminal MJC No. 18/2020 is set aside. The Revision petition is allowed and it is directed that vehicle in question be released and handed over to the applicant on the following conditions:-

(i) The applicant shall execute a bond in a sum of 70,000/- (Rs. Seventy thousand) with two solvent sureties of Rs. 35,000/- (Rs. thirty five thousand) each to the satisfaction of the Special Judge concerned;

- (ii) The 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 vehicle in question to any one else, till disposal of this case;
- (iv) The applicant shall also file an undertaking before the trial Court that the offending vehicle shall not be used for commission of any offence;
- (v) Before giving custody of the offending vehicle to the applicant, three coloured photographs of cabinet 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.
- (vi) The applicant shall produce vehicle either before trial Court or before such authorities as may be directed, on his own expenses, as and when directed.

Sd/-
N.K. Chandravanshi
Judge