

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.8703 of 2022

Arising Out of PS. Case No.-466 Year-2021 Thana- PATLIPUTRA District- Patna

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BHARAT BHUSHAN PRASAD Son of late Rameshwar Prasad Resident of
Village - Flat No.301, Rameshwar Sushila Complex, South Mandiri, Kathpur,
P.s.- Budha Colony, Distt.- Patna.

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Udbhav, Advocate

For the Opposite Party/s : Mr.Amit Kr Rakesh, Addl Public Prosecutor

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CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL JUDGMENT

Date : 01-09-2022

This application has been filed for quashing order dated 6.1.2022, passed by the learned Sessions Judge cum Special Judge NDPS, Patna in Special Case No. 130 of 2021, arising out of Patliputra Police Station Case No. 466 of 2021 registered for the offence punishable under sections 20(b)(ii)(c) of the NDPS Act and sections 25(1-b)a, 26 and 35 of the Arms Act, by which the learned Special Court has rejected the prayer of the petitioner for release of his Maruti Swift Dezire car bearing registration no. BR 01 EQ 7473 which has been seized in connection with Patliputra Police Station Case No. 466 of 2021.

As per the prosecution case, during patrolling informant and other police personnel chased and stopped a car by



overtaking and apprehended three persons and on search two pistols and live cartridges and bundle of Ganja have been recovered.

Learned counsel for the petitioner submits that petitioner has not been named in the FIR and till date he has not been made accused in this case. The petitioner claims to be the owner of the vehicle in question and submits that he is not concerned with the said offence or has got no concern with the alleged recovery of fire arms and Ganja. He further submits that the vehicle in question was purchased by the petitioner on hire purchase basis on 20.2.2022 after securing loan from Yes Bank for which the petitioner is still paying monthly EMI of Rs. 9858/-. A copy of loan account statement is contained in Annexure 3 to this petition. He next submits that no useful purpose would be served by keeping the vehicle at the police station in the open sky getting it rotten day by day. No confiscation proceeding is pending against the said vehicle. Petitioner undertakes that he would comply with the terms and conditions imposed by the court.

Learned counsel for the state has filed counter affidavit. While opposing the prayer for release of the vehicle of the petitioner, he submits that the same was seized by the police in



connection with Special Case No. 130 of 2021, arising out of Patliputra Police Station Case No. 466 of 2021 which was registered for the offence punishable under sections 20(b)(ii)(c) of the NDPS Act and sections 25(1-b)a, 26 and 35 of the Arms Act.

Heard learned counsel for the parties and perused the materials available on the records.

In the opinion of this Court, while considering the application for release of the vehicle, learned Sessions Judge cum Special Judge, N.D.P.S.Act, Patna in Special Case No. 130 of 2021, arising out of Patliputra Police Station Case No. 466 of 2021 has failed to appreciate the provision of law contained in Chapter XXXIV of the Cr.P.C. and the ratio laid down by the Hon'ble Apex court in the case of **Sunderbhai Ambalal Desai Vs. State of Gujrat**, reported in **AIR 2003 SC 638**. Admittedly, no confiscation proceeding is pending against the vehicle. Accordingly, in view of the aforesaid provision of law and the ratio laid down by the Hon'ble Apex Court in the case of **Sunderbhai Ambalal Desai (supra)**, impugned order dated 6.1.2022, being erroneous and unjust, is quashed and set aside.



Trial court is directed to release Maruti Swift Dezire car bearing registration no. BR 01 EQ 7473 in favour of its owner/the petitioner within two weeks from the date of receipt of a copy of this order on the terms and conditions as may deem fit and proper. During pendency of the case, petitioner will not sell or create any third party right with respect to the vehicle in question.

The petition is allowed in the aforesaid terms.

(Prabhat Kumar Singh, J)

Shashi

AFR/NAFR	NAFR
CAV DATE	1.9.2022.
Uploading Date	5.9.2022.
Transmission Date	5.9.2022.

