

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.411 of 2022

Arising Out of PS. Case No.-769 Year-2021 Thana- ARA NAGAR District- Bhojpur

Vivek Kumar Son of Ram Suresh Ram @ Suresh Ram Resident of Village -
Daulatpur, P.S.- Muffasil Ara, District - Bhojpur.

... .. Petitioner

Versus

1. The State of Bihar, through the Home Secretary Bihar, Patna
2. The Officer-in-Charge Ara Nagar Police Station District Bhojpur.

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Ajay Kumar Singh, Advocate
For the Respondent/s : Mr. Anil Kumar, AC to SC 8

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

4 29-09-2022 Learned counsel for the petitioner undertakes to remove
all the S.R. defect(s), if any, within four weeks from today.

Heard learned counsel for the petitioner and learned AC to
SC 8 for the State.

Petitioner in this case is seeking setting aside the order
dated 02.02.2022 passed by the learned Session Judge, Bhojpur in
N.D.P.S. Case No. 14 of 2021 (arising out of Ara Nagar P.S. Case
No. 769 of 2021,) registered for the offence under Section 21(b)
27/29 N.D.P.S. Act whereby and whereunder the learned court has
rejected the prayer of the petitioner to release the motorcycle of the
petitioner in question.

Learned counsel for the petitioner has submitted that the
motorcycle of the petitioner has been seized on the allegation that
the petitioner is indulged in illicit activities of Narcotics material by
using the said motorcycle. It is submitted that the seizure was made



on or about 29.10.2021 and since then the motorcycle in question is lying under open sky of the Police Station. It is submitted that the trial of the case is not likely to be concluded in near future.

It is submitted that with every passing day, the motorcycle is losing its road worthiness and there is every possibility that over the period either most of the valuable parts of the motorcycle would have been stolen away or would not be in a position to be used.

Referring to the judgment in the case of Hon'ble Supreme Court in the case of **Sunderbhai Ambalal Desai vs. State of Gujarat** reported in (2002) 10 SCC 283 followed by **General Insurance Council and Others Vs. State of Andhra Pradesh and Others** reported in 2010 (6) SCC 768, learned counsel submits that no significant purpose would be served in keeping the motorcycle in the Police Station till conclusion of the trial. Petitioner is ready to abide by such terms and conditions on which release may be ordered.

In the given facts and circumstances of the case, considering that the motorcycle is lying under seized condition and under open sky in the Police Station for the last about 11 months and the trial of the case is not likely to be concluded in the near future, this Court directs release of the motorcycle bearing Registration No. BR-03AF-2159, subject to the petitioner furnishing a surety bond (not in cash or in form of bank guarantee) to the extent of the value of the motorcycle in question as per the last insurance value of the



motorcycle, in the learned court below. The petitioner shall also furnish an undertaking that during pendency of the trial he will not transfer it and would not encumber otherwise and shall produce the same as and when required by the competent Court and in course of trial will not question the identity of the motorcycle.

The Panchnama of the motorcycle shall also be prepared in presence of the two witnesses and the same shall be kept on the records of the learned trial court.

Let the entire exercise be carried out within a period of 7 days from the date of submission of the surety bond in the learned court below.

This application stands disposed of accordingly.

Certified copy of this order shall be made available only after removal of the defect(s) if any.

(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'.

