

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.51019 of 2021**

Arising Out of PS. Case No.-2 Year-2019 Thana- MALI District- Aurangabad

Shiv Sagar Ray Son Of Vishani Ray Resident Of Village- Ramdatahi, P.S.-
Shahpur, District- Bhojpur, Ara.

... .. Petitioner

Versus

The State Of Bihar

... .. Opposite Party

Appearance :

For the Petitioner/s : Mr.Arun Kumar Pandey, Advocate
For the Opposite Party/s : Meena Singh, Addl Public Prosecutor

**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR SINGH
ORAL JUDGMENT**

Date : 01-09-2022

This application has been filed for quashing order dated 6.1.2021 passed by the learned Additional Sessions Judge IX, Aurangabad in Sessions Trail No. 15 of 2020 arising out of Mali Police Station Case No. 2 of 2019 registered for the offence punishable under sections 399, 402,415 of the IPC, whereby the learned trial court has rejected application of the petitioner for release of his vehicle seized in Mali Police Station Case No. 2 of 2019.

Prosecution case in brief is that on 24.1.2019 at about 8.30 am informant got confidential information that some miscreants are moving in a Mahindra Scorpio vehicle bearing Engine No. WRJ4G12836 (herein after referred to as the vehicle) with a view to commit crime. Upon the said information, police reached the place and apprehended six



accused persons along with the said vehicle. On search, arms and ammunition, some cash and ornaments were recovered. It is further alleged that one of the apprehended persons disclosed that the seized vehicle has been purchased by ill gotten money.

Learned counsel for the petitioner submits that the petitioner is not named in the FIR, however, his name has come in the case during investigation and thus he has become victim of circumstances. Petitioner, being owner of the vehicle, filed an application for release of the vehicle submitting that he is not accused in the case and purchased the vehicle from Rohit Automobiles, Ara on 18.1.2019 and the vehicle was financed by Mahindra and Mahindra Financial Services Ltd. A copy of the sale certificate and acceptance letter of the finance company are contained in Annexure 2 series. It is further submitted 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 Mali Police Station Case No. 2 of 2019 which was registered for the offence punishable under sections 399, 402 and 415 of the IPC read with sections 25(1-b)a, 26 and 35 of the Arms Act. On the basis of written statement of the Sub Inspector of Mali police station. During course of investigation, it has come that the petitioner is accused in two other criminal cases also. It has also come during course of investigation that the vehicle was purchased in the name of this petitioner by co-accused Dhiraj Mishra by using money which was received from disposal of gold jewelaries looted from the shop of Auragabad in which petitioner had also been made accused. It is next submitted that in view of the fact that the seized vehicle was being used for committing crime and was purchased out of ill gotten money, as such, the same should not be released in favour of the petitioner which is subject matter of the criminal case.

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 Additional Sessions Judge IX, Aurangabad in Sessions Trial No. 15 of 2020, 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 **Sunderbhai Ambalal Desai (supra)**, impugned order dated 6.1.2021, being erroneous and unjust, is quashed and set aside.

Trial court is directed to release the vehicle namely, Mahindra Scorpio vehicle bearing Engine No. WRJ4G12836, 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.

Shashi

(Prabhat Kumar Singh, J)

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

