

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**Criminal Writ Jurisdiction Case No.1254 of 2021**

Arising Out of PS. Case No.-729 Year-2020 Thana- KANTI District- Muzaffarpur

Kanti Kumari, Wife of Shambhu Prasad Yadav, R/O Village - Bathana  
(Madhopur Ram), P.S.- Kanti, District - Muzaffarpur

... .. Petitioner/s

Versus

1. The State of Bihar through the Director General of Police, Patna, Bihar
2. The Inspector General of Police, Tirhut Range, Muzaffarpur, Bihar
3. The Senior Superintendent of Police, Muzaffarpur Bihar
4. The Officer in charge, Kanti Police Station, District - Muzaffarpur Bihar

... .. Respondent/s

**Appearance :**

For the Petitioner/s : Mr.Arvind Kumar, Advocate  
For the Respondent/s : Mr.Manish Kumar, Advocate

**CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD**  
**ORAL ORDER**

3      24-08-2022                      This writ application has been filed for setting aside the order dated 24.07.2021 (Annexure-3) passed by the learned 4<sup>th</sup> Additional Session Judge, Muzaffarpur in N.D.P.S. Case No.139/2020 arising out of Kanti P.S. Case No. 729/2020 registered for the offences under Section 20, 22 of the N.D.P.S. Act and Sections 25(1-b)a, 26 of the Arms Act. By the impugned order, the learned court has been pleased to reject the petition seeking release of motorcycle (TVS Apache) bearing its Registration No.BR06BB/0190, Engine No.OE4NG2101548, Chasis No.MD634KE45G2N54599.

Learned counsel for the petitioner submits that as per the First Information Report when the ASI who is the informant



of this case searched the person of the accused Rahul Kumar, a packet looking like charas was found wrapped in white foil tied with a gamchha near his stomach and in the left side of waist of his pant, one pistol was recovered from his possession. No valid document was produced by the said accused to justify the carrying of said charas which was 400 gms.

Learned counsel submits that this petitioner is the owner of the seized vehicle. She is not an accused in this case. She filed an application in the learned court below for release of the vehicle in question. The court called for a report from the investigating officer who vide his letter dated 01.06.2021 submitted a report saying that the petitioner is the owner of the seized motorcycle. It is further stated in the report that a confiscation proposal has been submitted to the District Magistrate, Muzaffarpur.

Learned counsel submits that no confiscation proceeding has been initiated by the District Magistrate. He has no jurisdiction to start confiscation proceeding of the vehicle seized under N.D.P.S. Act and no notice of confiscation has been served upon the petitioner.

Learned counsel submits that in similar circumstance this Court vide its order dated 27.09.2021 passed in Cr.W.J.C.



No.871 of 2021 directed release of the motorcycle on such terms and conditions which were thought just and proper. The petitioner is also ready to abide by such terms and conditions which may be imposed upon her for purpose of release of the vehicle.

Learned counsel further submits that in the light of the judgments of the 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**, this Court may consider release of the vehicle in question. It is his submission that if the vehicle is not released and it is allowed to remain under the open sky in the premises of the police station, after some time it will have no worth and that will be a loss not only to the petitioner but to the State as well. It is submitted that ultimate aim of the confiscation is to compensate the State and in such circumstance when the vehicle will lose its road worthiness the State will not gain anything out of that.

Learned counsel for the State has though opposed the prayer for release of the vehicle in question but in the counter affidavit there is no averment that any order of confiscation of



the vehicle has been passed in this case by the competent court. Only a vague plea has been taken that a proposal for confiscation has been sent to the District Magistrate, Muzaffarpur vide letter dated 27.05.2021.

Having regard to the facts and circumstances and the materials noticed hereinabove and on finding that the owner of the vehicle is not an accused in this case, the vehicle is lying under open sky for last more than two years and at this stage there is no order of confiscation of the vehicle in question and further looking into the judgments of the Hon'ble Supreme Court as noted hereinabove, this Court is of the considered opinion that the learned court below has erred in rejecting the petition for release of the vehicle in question. Keeping the vehicle further under open sky would only allow to get it lost on its value and road worthiness.

This Court, therefore, directs release of the vehicle in question on the petitioner satisfying the court below with the documents of her ownership of the vehicle. Such release shall be subject to the condition that the petitioner shall not deal with the vehicle in question in any form or manner, she shall not transfer it and would not encumber otherwise and she would furnish a surety to the extent of a sum of Rs.50,000/- (not in



cash or bank grantee) in the learned court below with an undertaking that she would produce the vehicle in question as and when required by the learned trial court or on passing of an order of confiscation against the vehicle.

Let the learned court below pass an appropriate order for release.

This writ 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'.

