

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.73 of 2022

Arising Out of PS. Case No.-271 Year-2020 Thana- BOCHAHAN District- Muzaffarpur

AMRENDRA KUMAR THAKUR Son of Ramjiwan Thakur R/o Village -
Ariipur, P.O. - Sirsiyan, P.S. Kanti, District - Muzaffarpur.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR THROUGH THE DIRECTOR GENERAL OF
POLICE BIHAR,PATNA Bihar
2. The District Magistrate- cum- Collector, Muzaffarpur, District -
Muzaffarpur. Bihar
3. The Senior Superintendent of Police, Muzaffarpur, District - Muzaffarpur.
Bihar
4. The Station Head officer, Bochahan Police Station, District - Muzaffarpur.
Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr.Pushpendra Kumar Singh
For the Respondent/s	:	Mr.M. Nasrul Huda Khan

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

3 22-08-2023 The present writ application has been filed against the order, dated 30.10.2021, passed, by the learned 5th Additional Sessions Judge, Muzaffarpur, in N.D.P.S. Case No. 91 of 2020, arising out of Bochahan Police Station Case No. 271 of 2020, dated 03.10.2020, registered for the offences punishable under Sections 20/22 of the Narcotic Drugs and Psychotropic Substances Act, 1985, whereby the learned 5th Additional Sessions Judge, Muzaffarpur, has rejected the prayer of the petitioner for release of his Passion Pro motorcycle, bearing registration no. BR-06BX/7564, in favour of the petitioner



pending trial or confiscation proceeding.

2. The brief facts, giving rise to the present writ application, is that on the basis of written report submitted by Rajesh Ranjan, Station House Officer of Bochahan Police Station, Bochahan Police Station Case No. 271 of 2020 was registered, stating therein that on the basis of secret information that accused Rohit Singh was carrying ganja in a bag and is coming on a motorcycle, intercepted one black-coloured passion pro motorcycle, bearing Registration No. BR-0BX/7564 and the person sitting on the said motorcycle tried to flee away, but the police party, after chasing them, apprehended the accused Rohit Singh and upon search, the police recovered 500 gms. of ganja, kept in a bag, which the accused Rohit Singh was carrying. It has further been alleged that when the police demanded the papers relating to the ownership of the motorcycle in question, the said accused Rohit Singh could not show any papers and the motorcycle appeared to be the stolen motorcycle.

3. Learned counsel for the petitioner submits that petitioner is the owner of the seized passion pro motorcycle, having Registration Number BR-06BX/7564. He further submits that the petitioner is not an accused in this present case. He further submits that the petitioner had gone out of the station



after parking his motorcycle at the residence of accused Rohit Singh. In support of the ownership of the motorcycle in question, the petitioner has annexed the Certificate of Registration, at Annexure-1. He further submits that the confiscation proceeding has not been initiated as yet and in view of Section 63 of the Narcotic Drugs and Psychotropic Substances Act, 1985, the confiscation proceeding may not be initiated till the conclusion of the trial. He further submits that the motorcycle in question is kept in an open space in the police station and is subject to deterioration and losing its road worthiness on daily basis.

4. Learned Counsel, assailing the order of learned District Court, submits that the learned District Court has failed to appreciate the legal provisions enshrined under Section 451 and 457 of the Code of Criminal Procedure, 1973, and the law laid down by the Supreme Court, in the case of **Sunderbhai Ambalal Desai v. State of Gujarat**, reported in (2002)10 SCC 283, as well as the judgment of co-ordinate Bench of this Court, in the case of **Jai Kishan Kumar v. Union of India**, reported in 2021 (1) BLJ 374.

5. On the other hand, learned Counsel for the respondents opposed the prayer of the petitioner for release of



the motorcycle in his favour during pendency of the trial and/or confiscation proceeding.

6. I have heard learned Counsel for the parties concerned and have also gone through the provisions prescribed in Code of Criminal Procedure, 1973, as well as Sections 60, 61 and 63 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

7. From perusal of Sections 60, 61 and 63 of the Narcotic Drugs and Psychotropic Substances Act, 1985, it appears that any conveyance used in carrying Narcotic Drugs and Psychotropic Substance is liable for confiscation, provided it is proved that the vehicle/conveyance was being used with the knowledge or connivance of the owner himself or his agent. In absence of any such material, there cannot be any confiscation in the first instance.

8. In view of the aforesaid, now the question of release of the motorcycle of the petitioner would be under the provisions of Sections 451 and 457 of the Code of Criminal Procedure, 1973, which deal with the power of the Court to order for the disposal/custody of the property pending trial in certain case and the procedure by the police upon seizure of the property.



9. From perusal of Sections 451 and 457 of the Code of Criminal Procedure, 1973, it would appear that the Court is empowered to pass an appropriate order with regard to such property.

10. The object and scheme of the various provisions of the Code of Criminal Procedure, 1973, dealing with seizure of property by the police has been dealt with by the Supreme Court, in the case of **Sunderbhai Ambalal Desari v. State of Gujarat reported in (2002) 10 SCC 283** in paragraphs 5 and 7, wherein it has been observed as follows:-

“5. Section 451 clearly empower the Court to pass appropriate orders with regard to such property, such as

(1) for the proper custody pending conclusion of the inquiry or trial;

(2) to order it to be sold or otherwise dispose of, after recording such evidence as it thinks necessary;

(3) If the property is subject to speedy and natural decay to dispose of the same.

7. In our view, the powers under Section 451 Cr.P.C. 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 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."

11. In paragraphs 17 and 21 of **Sunderbhai Ambalal Desari** (supra), the Supreme Court has observed as follows:-

"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.

21. However these powers are to be exercised by the concerned Magistrate. We hope and trust that the concerned Magistrate would



take immediate action for seeing that powers under Section 451 Cr.P.C. are properly and promptly exercised and articles are not kept for a long time at the police station, in any case, for not more than fifteen days to one month. This object can also be achieved if there is proper supervision by the Registry of the concerned High Court in seeing that the rules framed by the High Court with regard to such articles are implemented properly."

12. The Supreme Court, in another judgment reported in the case of **Smt. Basavva Kom Dyamangouda Patil v. State of Mysore and Another**, reported in **1977 (4) SCC 358**, while dealing with the seizure of property by the police and the object and scheme of the various provisions of the Code of Criminal Procedure, 1973, has observed, in paragraph 4, as follows:-

"4. The object and scheme of the various provisions of the Code appear to be that where the property which has been the subject-matter of an offence is seized by the police it ought not to be retained in the custody of the Court or of the police for any time longer than what is absolutely necessary, As the seizure of the property by the police amounts to a clear entrustment of the property to a Government servant, the idea is that the property should be restored to the original owner after the necessity



to retain it ceases. It is manifest that there may be two stages when the property may be returned to the owner. In the first place it may be returned during any inquiry or trial. This may particularly be necessary where the property concerned is subject to speedy or natural decay. There may be other compelling reasons also which may justify the disposal of the property to the owner or otherwise in the interest of justice. The High Court and the Sessions Judge proceeded on the footing that one of the essential requirements of the Code is that the articles concerned must be produced before the Court or should be in its custody. The object of the Code seems to be that any property which is in the control of the Court either directly or indirectly should be disposed of by the Court and a just and proper order should be passed by the Court regarding its disposal. In a criminal case, the police always acts under the direct control of the Court and has to take orders from it at every stage of an inquiry or trial. In this broad sense, therefore, the Court exercises an overall control on the actions of the police officers in every case where it has taken cognizance."

13. In view of the aforesaid discussion of law as well as the facts involved in the matter, I am of the considered opinion that the learned 5th Additional Sessions Judge,



Muzaffarpur, has failed to exercise his jurisdiction in correct legal perspective and thereby committed material irregularity inasmuch as if the motorcycle, in question, is allowed to be kept in open in the police station, it may lose its road worthiness due to natural decay on account of weather condition. It is not disputed that the petitioner is the owner of the motorcycle and the same is lying in open place in the police station since 2020.

14. Accordingly, the order, dated 30.10.2021, passed, by the learned 5th Additional Sessions Judge, Muzaffarpur, in N.D.P.S. Case No. 91 of 2020, arising out of Bochahan Police Station Case No. 271 of 2020, is set aside and the learned 5th Additional Sessions Judge, Muzaffarpur, is directed to release the motorcycle, in question, in favour of the petitioner after verifying the ownership/registration of the vehicle within a period of three weeks from the date of receipt/production of a copy of this order, subject to the following conditions:-

(i) That the petitioner shall furnish adequate security of Rs. 40,000/- to the satisfaction of the learned District Court.

(ii) That before handing over the motorcycle to the petitioner, a detailed and proper *punchnama* of the said vehicle after taking its photograph shall be prepared.

(iii) That the petitioner shall also execute bond that



the motorcycle, in question, shall be produced as and when required by the learned District Court.

(iv) That the petitioner shall also furnish an undertaking on oath that he shall not alienate or part with the ownership of the motorcycle till pendency of the trial.

15. In the result, this writ application is allowed with the aforesaid observations and directions.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

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