

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.7147 of 2022

Arising Out of PS. Case No.-22 Year-2021 Thana- HARSIDHI District- East Champaran

SURESH RAY Son of Vindeshwar Ray Resident of Village - Chehra Kalan,
P.S. - Goraul (Katahara - O.P.), District - Vaishali at Hajipur, at present resides
at 128/A, Acharya Prafulla Chandra Road, Kolkatta - 710006 (W.B.)

... .. Petitioner/s

Versus

THE STATE OF BIHAR

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Anish Chandra, Advocate

For the Opposite Party/s : Mr. Harendra Prasad, A.P.P.

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL JUDGMENT

Date : 11-12-2023

Heard learned counsel for the petitioner and learned
A.P.P. for the State.

2. Learned A.P.P. submits that in compliance of the
order dated 05.10.2023, he had requested the Senior
Superintendent of Police, East Champaran at Motihari to file
counter affidavit but despite his best endeavour he could not
receive any instructions.

3. The Court will not wait for the Senior Superintendent
of Police, East Champaran at Motihari to file his counter affidavit
at his leisure.

4. The present quashing application has been filed
seeking quashing of the order dated 08.09.2021 passed by the
learned Additional Sessions Judge-III, East Champaran at Motihari



in Harshidhi P.S. Case No. 22 of 2021 corresponding to NDPS Case No. 07 of 2021, whereby the learned Additional Sessions Judge-III, Motihari, has rejected the application filed by the petitioner under Section 451 of the Cr.P.C. for releasing the vehicle, i.e. Tata LPT 1412 bearing registration no. WB-23E-9686, which was seized by the police in connection with the aforesaid FIR instituted under Sections 395 and 412 of the Indian Penal Code read with Sections 21 and 22 of the NDPS Act.

5. Learned counsel for the petitioner submits that the learned trial court while rejecting the application for release of the vehicle relied on the fact that the petitioner did not submit the driving licence of the driver of the truck in question nor filed the original copy of the documents relating to the truck. Learned counsel next submits that no doubt, the vehicle is liable to be confiscated under Section 60 of the NDPS Act yet by virtue of Sections 36(c) and 51 of the NDPS Act, the provisions contained in Sections 451 or 457(1) of the Cr.P.C. would be applicable as none of the provisions of the NDPS Act are inconsistent with the provisions of the Cr.P.C., hence, in deserving cases the right of interim custody provided under Sections 451 or 457(1) of the Cr.P.C. cannot be denied and if the vehicle is allowed to remain in police station till the trial is not concluded, it will be rendered



waste and thus would be contrary to the decision of the Hon'ble Supreme Court in the case of **Sunderbhai Ambalal Desai vs. State of Gujarat** reported in **(2002) 10 SCC 283**.

6. Learned counsel for the petitioner next submits that petitioner is a transporter and his vehicle was booked by one Keshav Singh for transporting the goods of the Express Logistics. It is further submitted that no doubt, the case has been instituted under the NDPS Act but then the petitioner has no concern with the allegations as alleged in the FIR nor he is an accused in the present case. It is next submitted that the goods of Express Logistics which were also seized has been released by the Court of learned Additional District and Sessions Judge-II-cum-Special Judge, NDPS-II, East Champaran at Motihari by order dated 02.06.2022 in NDPS Case No. 07 of 2021 arising out of Harsidhi P.S. Case No. 22 of 2021.

7. Learned A.P.P. for the State, in absence of instruction, is not in a position to rebut the submissions of the learned counsel for the petitioner.

8. Considering the submissions made by the learned counsel for the petitioner, the order dated 08.09.2021 passed by the learned Additional Sessions Judge-III, East Champaran at Motihari in Harshidhi P.S. Case No. 22 of 2021 corresponding to NDPS



Case No. 07 of 2021 whereby application filed by the petitioner under Section 451 of the Cr.P.C. seeking release of the seized vehicle has been dismissed, is hereby quashed and the vehicle is directed to be released on the following conditions:-

(i) The petitioner shall furnish personal bond of Rs.10,00,000/- with one solvent surety of the like amount to the satisfaction of the learned trial court, thereafter the aforesaid truck shall be handed over to the petitioner on proving ownership of the vehicle.

(ii) Whenever required by the competent court, the truck shall be produced on petitioner's expense at the place directed.

(iii) At the time of release of the truck, the authorities shall ensure to take note of the chassis number, engine number and registration number of the truck in presence of the petitioner and obtain his signature and keep the same on record.

(iv) The petitioner shall not alter or change the condition of the truck in any manner during pendency of the case.

(v) The petitioner shall not create any third party right over the said vehicle; and

(vi) In the event, all or any of the aforesaid conditions are found to be violated, the opposite party shall be at liberty to



move this Court for seeking modification of the order passed by this Court releasing the vehicle.

9. Accordingly, the quashing application is allowed.

(Satyavrat Verma, J)

Kundan/-

AFR/NAFR	N.A.
CAV DATE	N.A.
Uploading Date	12.12.2023
Transmission Date	12.12.2023

