

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.289 of 2023

Arising Out of PS. Case No.-96 Year-2021 Thana- KUTUMBA District- Aurangabad

Rahul Kumar, Son of Ramjee Yadav @ Ramji Yadav R/v- Sarsot, P.S.-
Hariharganj, District- Palamu (Jharkhand)

... .. Petitioner

Versus

1. The State of Bihar
2. Superintendent of Police, Aurangabad
3. Officer-in-Charge, Kutumba Police Station, District- Aurangabad

... .. Respondents

Appearance :

For the Petitioner/s : Mr. Ashok Kumar Singh, Advocate
For the Respondent/s : Md. Irshad, AC to SC-1

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 07-12-2023 Heard learned counsel for the petitioner and Md.
Irshad, learned AC to SC-1 for the State.

2. The petitioner in the present case is seeking setting aside of the order dated 24.08.2022 passed by learned Additional Sessions Judge-VII, Aurangabad in Cr. Revision No. 35 of 2021 by which the learned Additional Sessions Judge has dismissed the Cr. Revision No. 35 of 2021 and refused to interfere with the order dated 18.11.2021 passed by learned Judicial Magistrate, 1st Class, Aurangabad in GR No. 975 of 2021 arising out of Kutumba P.S. Case No. 96 of 2021.

3. Learned counsel for the petitioner prays for a direction to release the vehicle bearing Registration No. JH-032-8444 which has been seized in connection with Kutumba P.S.



Case No. 96 of 2021.

4. Mr. Ashok Kumar Singh, learned counsel for the petitioner submits that on the basis of an information of the informant Rampukar Kumar, Sub-Inspector of Kutumba Police Station, a first information report giving rise to Kutumba P.S. Case No. 96 of 2021 has been registered. It is alleged that on information about the accident of a vehicle while carrying animals in illegal manner, when the informant reached at the spot, he found that a pickup van with five injured animals were lying in the damaged condition. The informant handed over the animals to the Bakhandi Cowshed and seized the vehicle and lodged the case.

5. Learned counsel submits that after investigation, the police has submitted a chargesheet under Section 279, 379, 414/34 of the Indian Penal Code and Section 11(i)(d)(e) of the Prevention of Cruelty to Animals Act.

6. The petitioner filed a petition on 19.08.2021 for release of the vehicle as the vehicle is a commercial vehicle and has been kept in open space causing damage to the vehicle. The said application of the petitioner was rejected by the learned Magistrate vide order dated 18.11.2021 and the revision application preferred against the same has also been rejected.



7. Learned counsel for the petitioner submits that on bare perusal of the impugned orders, it would appear that both the learned court below have failed to appreciate that the offences alleged under the Prevention of Cruelty to Animals Act 1960 and the rules framed thereunder have not been made out as yet.

8. Learned counsel submits that at this stage, when the petitioner is already pressing the prosecution under the special statute, his only prayer was to release the vehicle in question which is a commercial vehicle but for no plausible reason, the application for release has been rejected. He has relied upon the judgment of the Hon'ble Supreme Court in the case of **Sunderbhai Ambalal Desai Vs. State of Gujarat** reported in **(2002) 10 SCC 283** to submit that the vehicle in question is lying under the open sky and with every passing day, it is losing its road worthiness. Some of the valuable parts of the vehicle have already gone missing.

9. Md. Irshad, learned AC to SC-1 for the State has though opposed the prayer of the petitioner but save and except to say that in this case a chargesheet has already been filed against the petitioner, nothing has been brought before this Court to show as to why the vehicle in question cannot be



released. It is worth mentioning that more than two years have gone and the vehicle is lying under open sky and is getting damaged with every passing day. No fruitful and significant purpose is going to be served by keeping the vehicle standing for another few years which may ultimately result in loss of its utility and the asset itself will be destroyed.

10. Having regard to the facts and circumstances of the case and the discussions which have been made hereinabove, this Court sets aside the impugned order dated 24.08.2022 passed by learned Additional Sessions Judge-VII, Aurangabad and the order dated 18.11.2021 of the learned Magistrate by which they refused to release the vehicle in question. Upon setting aside the impugned orders, this Court directs release of the vehicle in question on the following terms and conditions:-

(i) The petitioner shall furnish valuable security to the extent of Rs.5 lakhs not in form of cash or bank guarantee with an undertaking that as and when required by the learned court below, the vehicle shall be produced.

(ii) During the continuance of the trial, the vehicle shall not be transferred or otherwise dealt with in favour of a third party.



(iii) The *Panchnama* shall be prepared by the court below before release of the vehicle and the same shall be preserved on the records which the petitioner undertakes not to question in course of trial.

11. Subject to the above conditions, on production of the documents showing ownership of the petitioner, the vehicle in question shall be released.

12. This application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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