

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.37986 of 2015

Arising Out of PS. Case No.-27 Year-2014 Thana- BELA INDUSTRIAL District-
Muzaffarpur

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Shashi Bhushan Sharma, son of Sri Braj Kishore Sharma, resident of
Mohalla-Chhapra Megh, Via-Silaut, P.s.-Mushahri, District-Muzaffarpur

... .. Petitioner/s

Versus

The State Of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Ritvik Thakur, Adv.

For the Opposite Party/s : Mr.Anil Kumar Singh 1, APP

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CORAM: HONOURABLE MR. JUSTICE RAJIV ROY

ORAL ORDER

Date : 25-02-2023

Heard learned counsel for the petitioner and the
State.

2. This is an application for quashing of the order dated 2.4.2015 passed by the learned Additional Chief Judicial Magistrate, Muzaffarpur in Bela P.S. Case No. 27 of 2014 by which the learned Magistrate rejected the application filed by the petitioner under section 451 of Code of Criminal Procedure for releasing the vehicle i.e. Pick Up Van bearing Registration No.-BR 06GB-1999 as well as the revisional order passed by the learned Sessions Judge, Muzaffarpur in Criminal Revision No. 57 of 2015 dated 12.05.2015 by which the learned Sessions Judge rejected the revision application filed by the petitioner against the order of learned Additional Chief Judicial



Magistrate. The petitioners further prays for grant of any other relief or reliefs for which he is entitled thereto.

3. As per the prosecution story, the allegation has been made that the informant was working as a 'chowkidar in Sanjay Foundry Factory which was closed and on 25.10.2014, in the night, after locking the factory, he was talking with some people when it is alleged that 10-11 boys aged about 20-25 years covering their face came inside the factory and on the point of gun apprehended them.

4. They further snatched the mobiles and keys of the door and brought white colour Pick Up Van inside the factory, loaded the articles and then escaped. Accordingly, the Bela P.S. Case No. 27 of 2014 was instituted under Sections 395 and 412 of the Indian Penal Code.

5. The police investigated the matter and charge-sheet submitted on 20.1.2015 as well as supplementary affidavit charge-sheet on 2.6.2015 followed by the cognizance.

6. As stated above, the petition has been filed for the release of the vehicle (Pick Up Van having Registration No. BR 06GB-1999).

7. Learned counsel for the petitioner straightway took this Court to an order of Hon'ble Apex Court in **C.M.**



Mudaliar versus State of Gujarat reported in **AIR 2003 Supreme Court 638** and referred to para-4 of the said order which read as follows :

“4. Learned Counsel further referred to the relevant Sections 451 and 457 of Code of Criminal Procedure, which read thus-

“451. Order for custody and disposal of property pending trial in certain cases. When any property is produced before any Criminal Court during any inquiry or trial, the Court may make such order as it thinks fit for the proper custody of such property pending the conclusion of the inquiry or trial, and, if the property is subject to speedy and natural decay, or if it is otherwise expedient so to do, the Court may, after recording such evidence as it thinks necessary, order it to be sold or otherwise disposed of.

Explanation.- For the purposes of this section, “property” includes



(a) property of any kind or document which is produced before the Court or which is in its custody,

(b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.

457. Procedure by police upon seizure of property- (1) Whenever the seizure of property by any Police Officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the



property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation, specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation.”

8. He also took this Court to para-7 and 10 which read as follows :

“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:

10. To avoid such a situation, in our view, powers under Section 451, Cr. P.C. should be exercised promptly and at the earliest.

Valuable Articles and Currency Notes”

9. On the point of release of the vehicle, the observation of the Hon’ble Apex Court has come in paragraphs 15, 16 and 17 as also in 21 which read as follows :

“15. Learned Senior Counsel Mr. Dholakia, appearing for the State of Gujarat further submitted that at present in the



police station premises, number of vehicles are kept unattended and vehicles become junk day by day, it is his contention that appropriate directions should be given to the Magistrates who are dealing with such questions to handover such vehicles to its owner or to the person from whom the said vehicles are seized by taking appropriate bond and the guarantee for the return of the said vehicles if required by the Court at any point of time.

16. However, the learned Counsel appearing for the petitioners submitted that this question of handing over vehicles to the person from whom it is seized or to its true owner is always a matter of litigation and a lot of arguments are advanced by the concerned persons.

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 of 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.

Adjourned for three weeks.”

10. He has further taken this Court to another order of



**General Insurance Council and Others versus State of
Andhra Pradesh and Others** reported in **Writ Petition (C)
NO. 14 of 2008** by the Supreme Court of India.

A perusal of para-15 read as follows :

*“15. It is a matter of common knowledge that as and when vehicles are seized and kept in various police stations, not only they occupy substantial space of the police stations but upon being kept in open, are also prone to fast natural decay on account of weather conditions. Even a good maintained vehicle loses its road worthiness if it is kept stationary in the police station for more than fifteen days. Apart from the above, it is also a matter of common knowledge that several valuable and costly parts of the said vehicles are either stolen or are cannibalised so that the vehicles become unworthy of being driven on road. To avoid all this, apart from the aforesaid directions issued hereinabove, we direct that all the
State Governments/ Union*



Territories/Director Generals of Police shall ensure macro implementation of the statutory provisions and further direct that the activities of each and every police stations, especially with regard to disposal of the seized vehicles be taken care of by the Inspector General of Police of the concerned Division/Commissioner of Police of the concerned cities/Superintendent of Police of the concerned district.”

11. The orders have been detailed out to show that the Hon’ble Apex Court clearly held which finds incorporated in para-17 that keeping the seized vehicles at police station for a long period is of no use and the learned Magistrate should pass appropriate orders immediately after taking appropriate bond and guarantee as well as security for the return of said vehicles if required at any time.

12. This Court is also of the view that after taking the bond as also security and all the necessary steps that the learned Magistrate may deem fit and proper to ensure that the vehicle is produced before the Court as and when required till the pendency of the case. If the accused(s) undertake and satisfy the



Court, the vehicle should be immediately released.

13. There is no point getting the vehicle rusted in the police premises and according to the petition, as stated in para-13, he had purchased a new vehicle (Pick Up Van) only in April, 2014 through New Tata Motors Finance Limited and was repaying the loan amount at the rate of 18,000/- per month and without his knowledge, the driver had used the Pick Up Van illegally.

14. In any case, when he is ready to accept all the terms and conditions that may be imposed by the learned Court to guarantee production of vehicle as and when required by the Trial Court, there is no point keeping the vehicle which according to the present case is lying since last eight years.

15. Learned APP on the other hand although oppose the prayer stating that the vehicle was used in the alleged loot, concedes that in the light of the Hon'ble Apex Court order in **C.M. Mudaliar versus State of Gujarat (supra)**, if the petitioner is ready to abide by all the terms and conditions imposed by the Trial Court for the production of vehicle as and when required, the same can be released.

16. Having gone through the facts of the case, the present petition which has been preferred with limited prayer for



the release of the vehicle pending trial, in the considered view of this Court, it would be fit and proper if the vehicle is released to the petitioner.

17. In the said event, the present petition is allowed. The concerned Trial Court is directed to release the vehicle after putting necessary terms and conditions to its satisfaction to ensure that the vehicle in question is produced by the petitioner, (the vehicle owner) as and when required.

18. Accordingly, the petition stands disposed of.

I.A. No. 439 of 2016

19. In view of the fact that the petition stands allowed, the I.A. No. 439 of 2016 is also disposed of.

(Rajiv Roy, J)

Ajay Singh/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	28/02/2023
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