

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.40655 of 2023

Arising Out of PS. Case No.-389 Year-2022 Thana- CHAKIA District- East Champaran

1. Ravi Kumar, Son Of Sri Laxman Mahto, resident Of Village- Baraniya Ward No.7, P.S.- Baragila, District- Bara Nepal
2. Krishna Devi Rauniyar, wife of Narayan Prasad Rauniyar, resident Of Village- Parsa Ward No. 12, P.S.- Birganj, District- Parsa (Nepal).

... .. Petitioner/S

Versus

The State Of Bihar

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr. Ajay Kumar Thakur- Advocate

Ms. Vaishnavi Singh- Advocate

For the Opposite Party/s : Mr. Nawal Kishore Prasad- A.P.P.

CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL JUDGMENT

20-09-2023

Heard learned counsel for the petitioners and

learned APP for the State.

2. The learned counsel for the petitioners submits that the present quashing application has been filed seeking quashing of the order dated 24.02.2023 passed by the learned Judicial Magistrate, 1st Class, Motihari in Chakiya P. S. Case No.389 of 2022, whereby the learned Judicial Magistrate has rejected the application filed on behalf of the petitioners for releasing the vehicle (Tanker) bearing Registration No.NA-4KH-3598 during pendency of Chakiya P. S. Case No.389 of 2022 registered under Sections 279 and 304-A of the



I.P.C.

3. The learned counsel for the petitioners submits that an F.I.R. came to be instituted by one Sundari Devi alleging that on 17.09.2022 at about 20.45 P.M., her minor son aged about 11 years was crossing the road along with his brother-in-law Vijay Bhagat after getting down from an auto at Banjhula Chowk and was crossing NH-27, when an oil tanker having Registration No.NA-4KH-3598, which was coming from Muzaffarpur side, was being driven rashly and negligently by the driver on account of which, her son got dashed and he died.

4. The learned counsel for the petitioners submits that it is a case of road accident for which an F.I.R. has been instituted and the vehicle in question which was loaded with fuel has been seized. It is further submitted that petitioner no.2 is the owner of the aforesaid vehicle and had executed a Power of Attorney in favour of petitioner no.1 for getting the vehicle



released. It is next submitted that it is not in dispute that petitioner no.2 is the owner of the vehicle. It is further submitted that the vehicle is registered in Nepal and was carrying petrol in terms of the Indo-Nepal Treaty, whereby several petroleum products are being carried from Indian Territory to Nepal Territory through Nepal Oil Corporation Limited. It is next submitted that the petitioner no.1 in terms of the power of attorney executed by the petitioner no.2 had filed an application seeking release of the vehicle under Section 451 Cr.P.C., but the same came to be rejected by order dated 24.02.2023, which is impugned in the present quashing application.

5. The learned counsel next submits that after cognizance was taken, the stage of the case has not changed and the vehicle is lying in the police station. It is further submitted that if the vehicle is not released, it will get destroyed on account of not being used and standing under open sky and at the same time, the



petrol which is stored in the vehicle shall also evaporate with passage of time.

6. The learned counsel next submits that when the application for release was filed, the learned Magistrate had called for a report from the police and the police submitted its report and the police did not have any objection for not releasing the vehicle, but still the vehicle was not released, but the learned Magistrate rejected the application seeking release of the vehicle.

7. The learned counsel next relies on a judgment of the Hon'ble Supreme Court in case of ***Sunderbhai Ambalal Desai vs. State of Gujarat reported in (2002) 10 SCC 283*** and draws the attention of the Court to Para-7 of the judgment, which is as follows:-

"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 panchanama before handing over possession of the 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."

8. The learned counsel next submits that the business of the petitioner is being hampered at the same time, the vehicle (Tanker) along with the fuel stored is getting destroyed with passage of time. It is next submitted that the vehicle would be produced in the trial



as and when required.

9. The learned Additional P. P. does not oppose the submission of the learned counsel for the petitioner.

10. Considering the submission made by the learned counsel for the petitioners, order dated 24.02.2023 passed by the learned Judicial Magistrate, 1st Class, Motihari in Chakiya P. S. Case No.389 of 2022, whereby application filed on behalf of the petitioners seeking release of the vehicle bearing Registration No. NA-4KH-3598 was rejected, is hereby quashed and the vehicle is directed to be released on the following conditions:-

I) The petitioner no.2 shall furnish a personal bond of Rs.10 Lacs with one solvent surety in the like amount to the satisfaction of the learned trial Court, thereafter, the aforesaid vehicle (Tanker) shall be handed over to the



petitioner along with the stored fuel on proving ownership of the vehicle.

II) Whenever required by the competent Court, the Tanker shall be produced on petitioner's expense at the place directed.

III) At the time of release of the tanker, the authorities shall ensure to take note of the chassis number, engine number and registration number of the truck in presence of the petitioner no.2 and obtain her signature and keep the same on record.

IV) The petitioners shall not alter or change the condition of the tanker in any manner during pendency of the case.

V) The petitioner shall not create any third party right over the said vehicle



*and in the event, all or any of the
aforesaid conditions are found to be
violated, the respondent shall be at
liberty to move this Court for seeking
modification of the order passed by this
Court releasing the vehicle.*

(Satyavrat Verma, J)

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AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	22.09.2023
Transmission Date	22.09.2023

