

IN THE HIGH COURT OF JUDICATURE AT PATNA
CRIMINAL MISCELLANEOUS No.60578 of 2022

Arising Out of PS. Case No.-288 Year-2021 Thana- SAHEBPUR KAMAL District-
Begusarai

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PAPPU KUMAR Son of Late Lakhan Prasad Yadav R/V- Raghunathpur, P.S-
Sahebpur Kamal Dist- Begusarai

... .. Petitioner/s

Versus

The State of Bihar

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr.Vaishnavi Singh, Advocate
For the Opposite Party/s : Mr.Tarun Prasad Mandal, APP

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CORAM: HONOURABLE MR. JUSTICE SATYAVRAT VERMA
ORAL ORDER

6 07-10-2023 Heard learned counsel for the petitioner and learned
counsel for the State.

2. The learned counsel for the petitioner submits that present quashing application has been filed for seeking quashing of the order dated 06.09.2022 passed by learned Additional Sessions Judge, Begusarai in N.D.P.S. Case No. 30 of 2021 arising out of Sahebpur Kamal P.S. Case No.288 of 2021, instituted under Section 120B, 414 and IPC read with Section 8(c), 21(c), 25 and 35 of the N.D.P.S. Act and Section 25(1)(B)(A), 26 and 35 of the Arms Act, whereby the learned Special Judge has been pleased to reject the application filed on behalf of the petitioner seeking release of a motorcycle bearing Registration No.BR-34R-1626 under Section 451 of the Cr.P.C.



3. The learned counsel for the petitioner submits that an FI.R. came to be instituted being Sahebpur Kamal P.S. Case No. 30 of 2021 wherein it was alleged that one Sonu Kumar of Village-Shaligrami is dealing in drugs and for verification and taking necessary action as per direction received from the superior authority, the informant along with police force came at the place of occurrence along with necessary equipment for detecting drugs and reached the house of Sonu Kumar when one person started fleeing with a bag who was apprehended and he disclosed his name as 'Sonu Kumar Suman'. It is next alleged that in the meantime, two other accused also tried to flee but they were also apprehended who disclosed their name as Nitish and Nikhil, when nearby people assembled and in presence of Jitendra and Pankaj, a search was conducted after following the procedure, as envisaged under the N.D.P.S. Act and from the pocket of Sonu, two mobile phone were recovered and from his backside 3 other mobile were also recovered alongwith a white and brown colour power substance which he disclosed as smack and the same was weighed and it was found to be 763 gram. Further from Nikhil and Nitish also mobile were recovered as detailed in the FIR along with 756 grams of Charas like substance. It is next alleged that thereafter the house was



searched and altogether 3.67 k.g. of Charas like substance were recovered along with other articles, as detailed in the FIR including a Tata Tigor Car bearing Registration No.BR-09AA-0706 and a royal Enfield motorcycle bearing Registration No.BR-34R-1626. It is further alleged that from dickey of the Tata Tigor, 365 gram Smack like substance was recovered as part of 3.67 kg. Of smack like substance. The learned counsel for the petitioner submits that learned trial Court while rejecting the application for release of the aforesaid motorcycle relied upon of Section 60(3) of the NDPS Act.

4. It is next submitted that the vehicle seized is liable to be confiscated under section 60 of the NDPS Act yet by virtue of Section Section 36(C) of NDPS Act and Section 51 of the NDPS, the provisions as contained in Section 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. and hence in deserving cases, the right of interim custody provided under Section 451 (1) or 457(1) of Cr.P.C. cannot be denied and if the vehicle is allowed to remain in police station, it will be rendered waste and thus would be contrary to the decision of Hon'ble Supreme Court in the matter of **Sunderbhai Ambalal Desai Vs. State of Gujarat** reported in



2022 (10) SCC 283.

4. The learned counsel next relies on a order of this Court dated 4.9.2023 passed in Cr. Misc. No. 41623 of 2023 and submits that the present case is squarely covered by the decision rendered in Cr. Misc. No.41623 of 2023.

5. Mr. Jharkhandi Upadhaya, the learned APP for the State opposes the bail application.

6. Considering the submission made by learned counsel for the petitioner and also taking into consideration the order dated 4.9.2023 in Cr. Misc. No.41623 of 2023, the order dated 6.9.2022 passed by the learned Addl. Sessions Judge-I, Begusarai in N.D.P.S. Case No. 30 of 2021, arising out of Sahebpur Kamal P.S. Case No. 288 of 2021 whereby the application of the petitioner seeking release of the motorcycle was rejected is hereby quashed and the motorcycle bearing Registration No. BR-34R-1626 (Royal Enfield motorcycle) is directed to be released on the following conditions :-

(i) the petitioner shall furnish personal bond of Rs. 80,000/- with one solvent surety in the like amount to the satisfaction of the learned trial court, thereafter the aforesaid motorcycle, shall be handed over to the petitioner on proving ownership of the vehicle;



(ii) whenever required by the competent court, the motorcycle shall be produced on petitioner's expense at the place directed;

(iii) at the time of release of the motorcycle, the authorities shall ensure to take note of the chassis number, engine number and registration number of the motorcycle 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 motorcycle in any manner during pendency of the case;

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

(vi) 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 motorcycle.

7. The application stands allowed.

(Satyavrat Verma, J)

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