

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1339 of 2022

Arising Out of PS. Case No.-85 Year-2020 Thana- MITHANPURA District- Muzaffarpur

Md. Saddam @ Mohammad Saddam S/o Mohammad Murtuja, Resident of Village- Balughat karpuri Nagar, P.S.- (Sikandarpur O.P.), Town, District- Muzaffarpur.

... .. Petitioner/s

Versus

1. The State of Bihar through the Principal Secretary Home Department, Govt. of Bihar.
2. The Superintendent of Police Muzaffarpur.
3. The Station House Officer Mithanpura, District- Muzaffarpur.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Priyesh Kumar, Adv.
For the Respondent/s : Mr. Md. Nadim Seraj, GP-5.

CORAM: HONOURABLE MR. JUSTICE DR. ANSHUMAN
ORAL JUDGMENT

Date : 04-04-2023

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

The present Cr. Writ Petition has been filed by petitioner for quashing the order dated 30.11.2021 passed in N.D.P.S. Case No. 34 of 2020 arising out of Mithanpura P.S. Case No.85 of 2020 by which, the application for release of Bajaj Pulsar motorcycle bearing registration No. BR06BH-5976 has been rejected.

Learned counsel for the petitioner submits that the above said motorcycle has been admittedly seized in the said case and is lying unattended in the premises of Police Station,



due to which its value is deteriorating day to day and it shall be of no use in case the motorcycle shall not be released for a long period. The petitioner is ready to abide by all conditions imposed by the Court. Learned counsel relied on a judgment in the case of *Sunderbhai Ambalal Desai Vs. State of Gujarat* reported in *(2002) 10 SCC 290 : 2003 (4) PLJR (SC) 244* as well as relied on the case of *General Insurance Council and others Vs. State of Andhra Pradesh and others* and others reported in *(2010) 6 SCC 768*. He further submits that D.T.O. report has been received before the trial court by which it is crystal clear that the said vehicle bearing registration No. BR06BH-5976 lies in the name of petitioner and this fact has also come in the report of Police of Mithanpura P.S. by letter No. 1818 dated 05.09.2021. It has also come that no communication was made from the office of Collector, Muzaffarpur, as such, the proposal of forfeiture/confiscation of the aforesaid motorcycle is yet not been started.

Learned counsel for the State opposes the contention of petitioner and submits that the aforesaid motorcycle has been recovered from the place of occurrence. The said motorcycle is being used for conveyance for dealing with N.D.P.S. material. He submits that total 1.5 kg *Ganja* were recovered from persons who were riding the motorcycle. Counsel for the State further submits that the present case has been dealt



by special law i.e. to say N.D.P.S. Act.

He submits that Section 63(1) states that “*in the trial of offences under this Act, whether the accused is convicted or acquitted or discharge, the court shall decide whether any article or thing seized under this Act is liable to confiscation under section 60 or section 61 or section 62, and, if it decides that the article is so liable, it may order, confiscation accordingly.*” Learned counsel further submits that the said motorcycle was used in commission of the crime in N.D.P.S. material. He further submits that the case of Sunderbhai Ambalal Desai is not relating to N.D.P.S. material rather it is for those vehicles which were seized under the provisions of other laws.

After hearing the parties and upon going through the pleadings, one thing is crystal clear that this vehicle bearing registration No. BR06BH-5976 belongs to petitioner which has been supported by the letter of D.T.O. Section 60 (3) states as follow:-

60(3). Any animal or conveyance used in carrying any narcotic drug or psychotropic substance 2[or controlled substance], or any article liable to confiscation under sub-section (1) or sub-section (2) shall be liable to confiscations, unless the owner of the animal or conveyance proves that it was so



used without the knowledge or connivance of the owner himself, his agent, if any, and the person-in-charge of the animal or conveyance and that each of them had taken all reasonable precautions against such use.

As well as in the light of order passed by Co-ordinate Bench of this Court in the case of Hari Kishore Yadav @ Hari Kishore Prasad Yadav Vs. The State of Bihar and Anr. (order dated 18.07.2017 passed in Cr.W.J.C. No. 674 of 2017) this Court has held as under :-

“A perusal of the aforesaid provision makes it clear that confiscation of the vehicle cannot be ordered unless the owner is given opportunity to prove that whatever has been alleged to be seized was without his knowledge or connivance. Therefore, only on the ground that a confiscation proceeding is proposed, it cannot be said that vehicle should be allowed to be rotten in custody. Therefore, I do not find any reason in refusal of the prayer of the petitioner to have ad-interim custody of the above referred vehicle with condition that the petitioner shall not dispose of the same without permission of the Court and shall produce as and when require by the



Court.”

Further on the basis of other decision of this Court in the case of ***Nilu Singh Vs. Union of India and Anr.*** (order dated 21.04.2016 passed in Cr. Misc. No. 28193 of 2015) in which, it has been decided that a vehicle may be released imposing certain conditions i.e. to furnish bank guarantee, execute a bond for return of vehicle, undertaking on oath that ownership shall not change during pendency of trial and also to take any other reasonable surety from the petitioner to its own satisfaction.

In the case of ***General Insurance Council and others Vs. State of Andhra Pradesh***, Hon'ble Supreme Court pleased to observe as follows:-

“It is a matter of common knowledge that as and when vehicles are seized and kept in various police stations, not only do they occupy substantial space in 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 station, especially with regard to disposal of the seized vehicles be taken care of by the Inspector General of Police of the Division/Commissioner of Police concerned of the cities/Superintendent of Police concerned of the district concerned.”

In the light of observations made by the Hon’ble Supreme Court as well as the observations made by the Co-ordinate Bench of this Court, the court below is directed to release the vehicle in favour of petitioner subject to the following conditions:-

- (i) The petitioner shall furnish the bank guarantee of Rs.1 lac to the satisfaction of the court;
- (ii) The petitioner shall execute a bond for return of



said vehicle if required by the court at any point of time;

(iii) The petitioner shall also give an undertaking on oath that he shall not alter or part with the ownership of the vehicle during pendency of the trial; and

(iv) While passing the order for release the court below shall be at liberty to take any other reasonable sureties from the petitioner to its own satisfaction.

With these observations and directions, the present
Cr. Writ Petition stands allowed.

(Dr. Anshuman, J.)

Ritik/-

AFR/NAFR	
CAV DATE	
Uploading Date	
Transmission Date	

