

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.7 of 2022

Arising Out of PS. Case No.-368 Year-2021 Thana- MUZAFFARPUR TOWN District-
Muzaffarpur

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KRISHNA KANHAIYA Son of Kundan Kumar Resident of Village-Purushot-
tampur, P.S.-Maniyari, District-Muzaffarpur.

... .. Petitioner/s

Versus

1. The state of Bihar through the Director General of Police, Bihar, Patna
2. The District Magistrate, Muzaffarpur
3. The Superintendent of Police, Muzaffarpur
4. The S.H.O., Town Police Station, District-Muzaffarpur

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr.Dr. Bipin Chandra

For the Respondent/s : Mr.Sheo Shankar Prasad

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

- 3 01-09-2023 1. The present writ application has been filed against the order dated 30-10-2021 passed by learned Additional Sessions Judge-V, Muzaffarpur in N.D.P.S. Case No. 42 / 2021 arising out of Town P.S. Case No. 368 of 2021 dated 12-05-2021 registered for the offence punishable under Sections 414 of the I.P.C., Section 25 (1-B) a / 26 / 35 of the Arms Act and Section 8/20 (b)(ii)(A) of the N.D.P.S. Act whereby the learned court below refused to release the Bajaj Pulsar motorcycle of the petitioner bearing Registration No. BR-06CE-0156, Engine No.



DHYCkG64114, Chassis No. MD2411VYOKCG41740 and for release of the aforesaid Bajaj Pulsar motorcylce in favour of the petitioner pending trial or confiscation proceeding.

2. The brief facts giving rise to the present writ application is that the S.H.O. of Town P.S. Muzaffarpur got his statement recorded stating therein that on 12.05.2021 at 9:55 PM he got information that veteran criminals namely, Raushan Kumar Singh, Raja Singh, Rahul Kumar Jha involved in loot and theft were coming along with their associates on a looted motorcycle to Chhoti Saraiya for the purpose of sell and purchase of contraband articles, reached at the place of occurrence and apprehended the criminals who disclosed their names as: Pankaj Kumar, Raja Singh, Raushan Kumar Singh and Rahul Kumar Jha. The arrested accused were searched in presence of Magistrate and a country made pistol and mobile phone was recovered from the possession of Raja Singh and Raushan Kumar Singh separately. It is further alleged that from possession of Rahul Kumar Jha who was a pillion rider on the motorcycle, 01 KG Ganja wrapped in a cloth bag was recovered and seizure list was prepared.

3. Learned counsel for the petitioner submits that the petitioner is the owner of the seized Bajaj Pulsar motorcycle



having Registration No. BR-06CE-0156, Engine No. DHY-CkG64114 , Chasis No. MD2411VYOKCG41740. He further submits that vehicle in question was driven by one Raushan Kumar for some urgent work and on the way co-accused / Rahul Kumar Jha got lift on the aforesaid motorcycle having the contraband Ganja. He further submits that no Ganja was recovered from the motorcycle and/or conscious possession of the petitioner. He further submits that confiscation proceeding has not been initiated as yet and in view of Section 63 of the Narcotic Drugs and Psychotropic Substances Act, 1985, the confiscation proceeding may not be initiated till the conclusion of the trial. He further submits that the motorcycle in question is kept in an open space in the Police Station and is subject to deterioration and losing its road worthiness on daily basis.

4. Learned counsel assailing the order of learned District Court submits that the learned District Court has failed to appreciate the legal provisions enshrined under Section 451 & 457 of the Code of Criminal Procedure, 1973 and the law laid down by the Hon'ble Supreme Court in the case of **Sunderbhai Ambalal Desai v. State of Gujarat** reported in (2002)10 SCC 283 as well as the judgment of Co-ordinate Bench of this Court in the case of **Jai Kishan Kumar v. Union of India** reported in



2021 (1) BLJ 374.

5. On the other hand, learned counsel for the respondents opposed the prayer of the petitioner for release of the motorcycle in his favour during pendency of the trial and/or confiscation proceeding and submits that the aforesaid motorcycle was seized while being used as conveyance for transporting narcotic contraband substance.

6. I have heard learned counsel for the parties concerned and have also gone through the provisions prescribed in Code of Criminal Procedure, 1973 as well as Section 60 of the Narcotic Drugs and Psychotropic Substances Act, 1985.

7. Section 60 of the Narcotic Drugs and Psychotropic Substances Act, 1985, reads as follows:-

“60. Liability of illicit drugs, substances, plants, articles and conveyances to confiscation.—(1) Whenever any offence punishable under this Act has been committed, the narcotic drug, psychotropic substance, controlled substance, opium poppy, coca plant cannabis plant, materials, apparatus and utensils in respect of which or by means of which such offence has been committed, shall be liable to confiscation.

(2) Any narcotic drug or psychotropic substance [or controlled substances] lawfully produced, imported inter-State, exported inter-State, imported into India, transported, manufactured,



possessed, used, purchased or sold along with, or in addition to, any narcotic drug or psychotropic substance [or controlled substances] which is liable to confiscation under sub-section (1) and the receptacles, packages and coverings in which any narcotic drug or psychotropic substance [or controlled substances], materials, apparatus or utensils liable to confiscation under sub-section (1) is found, and the other contents, if any, of such receptacles or packages shall likewise be liable to confiscation.

(3) Any animal or conveyance used in carrying any narcotic drug or psychotropic substance [or controlled substances], or any article liable to confiscation under sub-section (1) or sub-section (2) shall be liable to confiscation, 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.”

8. From perusal of Section 60 of the Narcotic Drugs and Psychotropic Substances Act, 1985, it appears that any conveyance used in carrying Narcotic Drugs and Psychotropic Substance is liable for confiscation provided it is proved that the vehicle/conveyance was being used with the knowledge or connivance of the owner himself or his agent. In absence of any



such material, there cannot be any confiscation in the first instance.

9. Learned counsel for the petitioner has submitted that the petitioner has no concern with the recovered fire arms as well as contraband Ganja. He further submits that petitioner was also not aware about Ganja being kept on the Bajaj Pulsar motorcycle and there is no *prima facie* material on record to suggest that there was any complicity on the part of the petitioner.

10. In view of the aforesaid, now the question of release of the motorcycle of the petitioner would be under the provisions of Sections 451 & 457 of the Code of Criminal Procedure, 1973, which deals with the power of the Court to order for the disposal/custody of the property pending trial in certain case and the procedure by the Police upon seizure of the property.

11. Sections 451 & 457 of the Code of Criminal Procedure, 1973, are being quoted herein below:-

“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.

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.”

12. From perusal of the aforesaid provisions, it would appear that the Court is empowered to pass an appropriate order with regard to such property. The object and scheme of the



various provisions of the Code of Criminal Procedure, 1973, dealing with seizure of property by the Police has been dealt with by the Supreme Court in the case of **Sunderbhai Ambalal Desai v. State of Gujarat reported in (2002) 10 SCC 283** in **paragraphs- 5 and 7**, wherein it has been observed as follows:-

“5. Section 451 clearly empowers the Court to pass appropriate orders with regard to such property, such as:

(1) for the proper custody pending conclusion of the inquiry or trial;

(2) to order it to be sold or otherwise dispose of, after recording such evidence as it thinks necessary;

(3) If the property is subject to speedy and natural decay, to dispose of the same.

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."

13. In paragraphs- 17 & 21 of **Sunderbhai Ambalal Desai** (supra), the Supreme Court has observed as follows:-

"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 at 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 High Court concerned in seeing that the rules framed by the High Court with regard to such articles are implemented properly."

14. The Supreme Court in another judgment reported in the case of **Smt. Basavva Kom Dyamangouda Patil v. State**



of Mysore and Another reported in **1977 (4) SCC 358** while dealing with the seizure of property by the Police and the object and scheme of the various provisions of the Code of Criminal Procedure, 1973, has observed in paragraph- 4 as follows:-

“4. The object and scheme of the various provisions of the Code appear to be that where the property which has been the subject-matter of an offence is seized by the police it ought not to be retained in the custody of the Court or of the police for any time longer than what is absolutely necessary. As the seizure of the property by the police amounts to a clear entrustment of the property to a Government servant, the idea is that the property should be restored to the original owner after the necessity to retain it ceases. It is manifest that there may be two stages when the property may be returned to the owner. In the first place it may be returned during any inquiry or trial. This may particularly be necessary where the property concerned is subject to speedy or natural decay. There may be other compelling reasons also which may justify the disposal of the property to the owner or otherwise in the interest of justice. The High Court and the Sessions Judge proceeded on the footing that one of the essential requirements of the Code is that the articles concerned must be produced before the Court or should be in its custody. The object of the Code seems to be that any property which is in the control of the Court either directly or indirectly should be disposed of by the Court and a just and proper order should be passed by the Court regarding its disposal. In a criminal case, the police always



acts under the direct control of the Court and has to take orders from it at every stage of an inquiry or trial. In this broad sense, therefore, the Court exercises an overall control on the actions of the police officers in every case where it has taken cognizance."

15. Yet, in another judgment, in the case of **General Insurance Council and others v. State of Andhra Pradesh and others** reported in **(2010) 6 SCC 768**, the Supreme Court has directed to ensure implementation of statutory provision as contained in Sections 451 and 457 of the Criminal Procedure Code so as to avoid natural decay on account of weather conditions of seized vehicle in Police Station and in paragraphs- 11 &14 of **General Insurance Council** (supra) has directed as follows:-

"11. Notice of the said petition was issued to all the States and Union Territories. Almost all the States have contended that they have already issued necessary guidelines and directions for full and complete compliance of the provisions contained in Sections 451 and 457 of the Code as elaborated in *Sunderbhai Ambalal Desai* (supra) as also under Section 158(6) of the M.V. Act and Rule 159 of the Rules as directed in *General Insurance Council* case (supra). Thus, in one voice, they have contended that there would not be any difficulty in compliance with the directions that may be issued in furtherance of achieving the object as directed by this Court. Thus, in our view, there appears to be



consensus in this matter.

14. 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 herein above, 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."

16. In view of the aforesaid discussion of law as well as the facts involved in the matter, I am of the considered opinion that the learned Additional Sessions Judge-V, Muzaffarpur has failed to exercise his jurisdiction in correct legal perspective and thereby committed material irregularity inasmuch as if the



motorcycle in question is allowed to be kept in open in the Police Station it may lose its road worthiness due to natural decay on account of weather condition. It is not disputed that the petitioner is the owner of the motorcycle and the same is lying in open place in the Police Station since 2021.

17. Accordingly, the order dated 30-10-2021 passed by the learned Additional Sessions Judge-V, Muzaffarpur in N.D.P.S. Case No. 42 of 2021 arising out of Town PS Case No. 368 of 2021 is set aside and the learned Additional Sessions Judge-V, Muzaffarpur is directed to release the motorcycle in question in favour of the petitioner after verifying the ownership/registration of the vehicle within a period of three weeks from the date of receipt/production of a copy of this order subject to the following conditions:-

(i) That the petitioner shall furnish adequate security of Rs. 40,000/- to the satisfaction of the District Court.

(ii) That before handing over the motorcycle to the petitioner a detailed and proper *punchnama* of the said vehicle after taking its photograph shall be prepared.

(iii) That the petitioner shall also execute bond that the motorcycle in question shall be produced as and when required during the time of trial.

(iv) That the petitioner shall also furnish



an undertaking on oath that he shall not alien-
ate or part with the ownership of the motorcy-
cle till pendency of the trial.

18. In the result, this writ application is allowed with
the aforesaid observations and directions.

(Anil Kumar Sinha, J)

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