

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CRIMINAL MISCELLANEOUS No.67951 of 2023**

Arising Out of PS. Case No.-185 Year-2023 Thana- HARSIDHI District- East Champaran

Mirtunjay Kumar @ Mrityunjay Kumar, aged about 37 Years, Male, Son Of Krishna Kumar Singh, R/O Vill-Nawtan Bhatwaliya, P.S.-Sangrampur, Dist-East Champaran.

... .. Petitioner

Versus

1. The State Of Bihar.
2. Jwala Kr. Singh, S.H.O., Harsidhi, P.S. Harsidhi, Dist-East Champaran.

... .. Opposite Parties

**Appearance :**

|                    |   |                           |
|--------------------|---|---------------------------|
| For the Petitioner | : | Mr. Nafisuzzoha, Advocate |
| For the State      | : | Mr. Lalan Kumar, A.P.P.   |

**CORAM: HONOURABLE MR. JUSTICE CHANDRA PRAKASH SINGH**

ORAL ORDER

7      05-12-2024                      Heard learned counsel for the petitioner and learned A.P.P. for the State.

2. The present application has been filed on behalf of the petitioner for setting aside/quashing the order dated 17.06.2023, passed by learned Sessions Judge-cum-Special Judge, East Champaran, Motihari in Harsidhi P.S. Case No. 185 of 2023 by which the learned court below has been pleased to reject the petition of the petitioner for release of the motorcycle bearing Registration No. BR05AQ-4519 on 18.04.2023 which was seized by the Officer-in-charge of Harsidhi Police Station, East Champaran.

3. The prosecution case, in brief, is that police



apprehended three accused persons, namely, Deepak Chaubey, Shiv Kumar Sahani and Taseer Alam and one black colour Pulsar Motorcycle without registration number but Chassis No. MD2B64BXXMRA09313 and Engine No. DHXRMA89100 and other articles were seized from their possession. Police also recovered 1.444 grams Charas from the possession of the accused Shiv Kumar Sahani which was kept in a *Pithu Bag*. The accused Shiv Kumar Sahani has disclosed that the said motorcycle was snatched from Kotwa for which Harsidhi P.S. Case No. 185 of 2023 was lodged for the offences punishable under Sections 399, 402, 413, 414 of the I.P.C., Sections 25(1B) (a), 26 and 35 of the Arms Act and Sections 20(b)(ii)(c) of the N.D.P.S. Act on 17.03.2023. Later on, Sections 22(c), 25 and 29 of the N.D.P.S. Act were also added.

4. It is submitted by learned counsel for the petitioner that the petitioner is a teacher and his motorcycle bearing Registration No. BR05AQ-4519 was snatched by some unknown miscreants on 20.02.2023 for which Kotwa P.S. Case No. 62 of 2023 was lodged on 20.02.2023 registered for the offence punishable under Section 392 of the I.P.C. It is further submitted that the motorcycle of the petitioner which was snatched by some unknown miscreants was found involved in



Harsidhi P.S. Case No. 185 of 2023 dated 17.03.2023. It is further submitted that the petitioner is not an accused in the present case. It is further submitted that the petitioner has filed an application on 18.04.2023 before the learned Sessions Judge/Special Judge, East Champaran, Motihari, in Harsidhi P.S. Case No. 185 of 2023 (N.D.P.S. pre-trial) seeking release of his motorcycle but the same was rejected by the learned court below on 17.06.2023. It is further submitted that after filing of the petition on 18.04.2023 for release of the said motorcycle bearing its Registration No. BR05AQ-4519 and the learned court below has been pleased to call for a report from the S.H.O., Harsidhi Police Station, who has submitted its report on 11.05.2023 in which he has stated that the petitioner is the owner of the motorcycle in question which was snatched by some unknown miscreants about one month ago on 20.02.2023. It is further submitted that on 17.03.2023 three miscreants were apprehended. The alleged Charas was recovered from the possession of the accused Shiv Kumar Sahani and except that nothing has been recovered in the instant case and the petitioner being the owner of the said motorcycle lodged Harsidhi P.S. Case No. 62/2023 under Section 392 of the I.P.C. He further submits that the order dated 17.06.2023 by which the



application of the petitioner under Section 451 of the Cr.P.C. seeking release of the motorcycle in question has been rejected is cryptic and does not analyse the law. Learned counsel for the petitioner by filing a supplementary affidavit on behalf of the petitioner has submitted that the confiscation proceeding of seized motorcycle has not been initiated before the court of Collector, East Champaran, Motihari, as stated in paragraph no. 2 of the supplementary affidavit filed on behalf of the petitioner. Learned counsel for the petitioner has relied upon the order of this Court in the case of *Kuleshwar Ray Vs. Union of India* passed in *Cr. Misc. No. 41623 of 2023*, wherein this Court by an order dated 04.09.2023 released the truck of the petitioner which was seized by the DRI officials under Section 43(b) of the N.D.P.S. Act. He further submits that in mechanical manner the learned court below proceeds.

5. Learned A.P.P. for the State has vehemently opposed the prayer of the petitioner for release of his motorcycle bearing Registration No. BR05AQ-4519. Vide order dated 23.01.2024, the A.P.P. for the State was directed to file counter affidavit on behalf of the S.H.O., Harsidhi Police Station, but till date, no counter affidavit has been filed on his behalf.

6. Considering the aforesaid facts and circumstances



of the case and the finding substance in the contention of the learned counsel for the petitioner, the order dated 17.06.2023 passed in Harsidhi P.S. Case No. 185 of 2023 by learned Sessions Judge-cum-Special Judge, East Champaran, Motihari, rejecting the prayer of the petitioner for releasing his Motorcycle bearing Registration No. BR05AQ-4519 which has been seized by S.H.O. Harsidhi Police Station, East Champaran, Motihari, in Harsidhi P.S. Case No. 185 of 2023 registered for the offences punishable under Sections 399, 402, 413, 414 of the I.P.C., Sections 25(1B)(a), 26 and 35 of the Arms Act and Sections 20(b)(ii)(c) of the N.D.P.S. Act on 17.03.2023. Later on, Sections 22(c), 25 and 29 of the N.D.P.S. Act were also added, is set aside and the Motorcycle bearing Registration No. BR05AQ-4519 is directed to be interim released in favour of the petitioner on the following conditions:-

I. The petitioner shall furnish personal bond of Rs. 40,000/- 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 proper and correct verification of the ownership of the motorcycle.



- II. Whenever required by the competent court, the motorcycle shall be produced on the petitioner's expense at the place directed.
- III. At the time of interim release of the motorcycle, the authorities shall ensure to take note of the chassis number, engine number and registration of the motorcycle in presence of the petitioner and obtain his signature and keep the same on the record.
- IV. The petitioner shall not alter or change the condition of the motorcycle in any manner during the pendency of the case.
- V. The petitioner shall not create any third party right over the said vehicle.
- 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 release the vehicle.

U.K./-

|   |  |   |  |
|---|--|---|--|
| U |  | T |  |
|---|--|---|--|

(Chandra Prakash Singh, J)

