

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1743 of 2023

Arising Out of PS. Case No.-48 Year-2023 Thana- BHANGHA District- West Champaran

Santosh Kumar, Son of Dhruva Prasad, Resident of Village- Sukhalahiya,
Ward No. 01, P.S.- Darpa, District- East Champaran. Petitioner
Versus

1. The State of Bihar
2. The District Magistrate, West Champaran at Bettiah, Bihar.
3. The Superintendent of Police, West Champaran at Bettiah, Bihar.
4. The Station House Officer, Bhangha Police Station, West Champaran, Bihar.
... .. Respondents

Appearance :

For the Petitioner : Mr. Jitendra Kumar, Advocate
For the Respondents : Mr. Iqbal Asif Niazi, AC to GP-5

CORAM: HONOURABLE MR. JUSTICE RAJEEV RANJAN PRASAD
ORAL ORDER

2 15-01-2024 Heard learned counsel for the petitioner and Mr. Iqbal
Asif Niazi, learned AC to GP-5 for the State.

2. The petitioner in this case is aggrieved by and dissatisfied with the order dated 28.08.2023 passed by learned Additional District and Sessions Judge, 4th, Bettiah, West Champaran in Bhangha P.S. Case No. 48 of 2023 whereby and whereunder the application filed by the petitioner for release of the vehicle in question i.e. a motorcycle bearing Registration No. BR-05-AV-2320 has been rejected.

3. Learned counsel for the petitioner submits that the vehicle in question has been seized in connection with Bhangha P.S. Case No. 48 of 2023 registered for the offences alleged under Sections 20(b)(ii)(b), 22(b) and 23(b) of the Narcotic

Drugs and Psychotropic Substances Act, 1985. It is alleged that 450 grams of *charas* was kept beneath the seat of the motorcycle. It is submitted that the petitioner is not an accused in the said case but he is owner of the vehicle and on the date the vehicle was intercepted by police and seized, it was being driven by the younger brother of the petitioner.

4. Learned counsel for the petitioner submits that the motorcycle is kept in the police station under open sky and the trial of the case is not likely to be concluded in near future. The vehicle is being damaged day by day and there would be a situation when the vehicle will be of no worth and in the ultimate analysis even after confiscation of the vehicle upon conclusion of trial, the State is not likely to be benefited.

5. Learned counsel submits that in the case of **Sunderbhai Ambalal Desai Vs. State of Gujarat** reported in **(2002) 10 SCC 283**, the Hon'ble Supreme Court has laid down certain guidelines with regard to release of the vehicle in question.

6. It is his submission that the learned court below has rejected the application of the petitioner on the solitary ground that the vehicle in question is a material exhibit in the pending trial. The petitioner is ready to abide by such terms and

conditions which may be imposed by this Court for purpose of release of the vehicle in question and he would undertake that in course of trial he would not question the identity of the vehicle.

7. Mr. Iqbal Asif Niazi, learned AC to GP-5 submits that learned court below seems to have rejected the application because this vehicle is a material exhibit in course of trial.

8. Having heard learned counsel for the petitioner and learned AC to GP-5 for the State as also on going through the records, this Court is of the considered opinion that no significant purpose would be served by keeping the vehicle in question lying in the police station under open sky. With every passing day, the vehicle is likely to lose its road worthiness and in ultimate analysis even if the vehicle is held liable to be confiscated, the State will not get any value for the same and it would no way serve the purpose behind the seizure and confiscation of a vehicle involved in an alleged offence.

9. Instead, this Court is of the opinion that pending the trial, the vehicle be released in favour of its owner on production of document of ownership subject to certain terms and conditions which may be imposed by the learned trial court to ensure that the vehicle in question is not transferred or encumbered in any manner during the ongoing trial and the

same shall be produced if so required in course of trial.

10. This Court accordingly directs release of the vehicle subject to the following conditions:-

“(i) the petitioner who claims to be the owner of the vehicle shall produce the document of ownership;

(ii) the photograph of the vehicle shall be taken and the same shall be certified by the learned court below with counter signature of the petitioner who will undertake not to question the identity of vehicle in course of trial;

(iii) the petitioner shall furnish an undertaking that he would not encumber the vehicle or transfer it in favour of any other person during the pendency of the trial and shall produce the same as and when required before the learned trial court;

(iv) the petitioner shall also furnish a personal surety to the extent of the value of the vehicle as may be recorded in the insurance policy and shall undertake that he would abide by the surety, if so required at the instance of the court.”

11. The impugned order is set aside.

12. This writ application stands disposed of accordingly.

(Rajeev Ranjan Prasad, J)

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