IN THE HIGH COURT OF MADHYA PRADESH AT JABALPUR

BEFORE

HON'BLE SHRI JUSTICE VISHAL MISHRA

ON THE 25th OF JANUARY, 2024

MISC. CRIMINAL CASE No. 48695 of 2023

BETWEEN:-

VIKAS TIWARI S/O SHRI GOVIND PRASAD TIWARI, AGED ABOUT 32 YEARS, OCCUPATION: BUSINESS RESIDENT OF FOREST COLONY KATNI P.S. KOTWALI DISTRICT KATNI (MADHYA PRADESH)

.....APPLICANT

(BY SHRI SAMPOORAN TIWARI - ADVOCATE)

AND

THE STATE OF MADHYA PRADESH THROUGH EXCISE (CIRCLE 2) DISTRICT KATNI (MADHYA PRADESH)

.....RESPONDENT

(BY SHRI SOURABH SHUKLA - PANEL LAWYER)

This petition coming on for admission this day, the court passed the following:

ORDER

The present petition has been filed by the petitioner under Section 482 of Cr.P.C. assailing the order dated 11.04.2022 passed by the learned Principal Sessions Judge, Katni in C.R.R.No.31 of 2022, whereby criminal revision under Section 397 of Cr.P.C. for releasing of the vehicle on Supurdginama of Tata Zest Car bearing registration No.MP21A7452 has been dismissed.

2. It is alleged by the prosecution that offending vehicle was being used for illegal transporting of 90 bulk liter illicit liquor spices and, therefore, the same has been seized and a case under Sections 34(1)(i), 34(2) and 59(i) of the Excise Act, 1915 has been registered against the accused person.

Signature Not Verified
Signed by: SUSHEEL KUMAR JHARIYA
Signing time: 1/25/2024 6:39:38 PM

3. It is submitted that the petitioner is a registered owner of the vehicle in question and has moved an application under Seciton 457 of the Cr.P.C. before the Court of Chief Judicial Magistrate, Katni. The same was dismissed vide order dated 16.03.2022 and being aggrieved by the same, he has preferred the instant revision before the principal Judge, Katni which has been dismissed vide impugned order. It is submitted that there is no other offence is registered or pending against the petitioner. There is no criminal case registered against the present petitioner. The question of releasing the vehicle was considered by the Honble Supreme Court in the case of ***Sunderbhai Ambalal Desai Vs. State of Gujarat*** reported in ***AIR 2003 SC 638***, wherein, on furnishing of certain bail bonds and surety, the same was directed to be released. In such circumstances, he has prayed for setting aside the impugned order passed by the learned trial Court and prayed that supurdgi of the vehicle be handed over to the petitioner

4. Per contra, learned counsel for the State vehemently opposed the submissions made on behalf of the petitioner and has prayed for rejection of this petition.

5. Heard the arguments of both the parties and perused the record.

6 . In *Sunderbhai Ambalal Desai (supra)*, the Honble Apex Court in paragraphs, 15,16,17 and 18, has held as under:

> *"Learned senior counsel Mr. Dholakia, appearing for the State of Gujarat further submitted that at present in the police station premises, number of vehicles are kept unattended and vehicles become junk day by day. It is his contention that appropriate directions should be given to the Magistrates who are dealing with such questions to hand over such vehicles to its owner or to the person from whom the said vehicles are seized by taking appropriate bond and the guarantee for the return of the said vehicles if required by the Court at any point of time.*
>
> *However, the learned counsel appearing for the petitioners*

Signature Not Verified
Signed by: SUSHEEL KUMAR JHARIYA
Signing time: 1/25/2024 6:39:38 PM

submitted that this question of handing over vehicles to the person from whom it is seized or to its true owner is always a matter of litigation and a lot of arguments are advanced by the concerned persons.

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.

In case where the vehicle is not claimed by the accused, owner, or the insurance company or by third person, then such vehicle may be ordered to be auctioned by the Court. If the said vehicle is insured with the insurance company then insurance company be informed by the Court to take possession of the vehicle which is not claimed by the owner or a third person. If Insurance company fails to take possession, the vehicles may be sold as per the direction of the Court. The Court would pass such order within a period of six months from the date of production of the said vehicle before the Court. In any case, before handing over possession of such vehicles, appropriate photographs of the said vehicle should be taken and detailed panchnama should be prepared."

Considering the aforesaid law laid down by the Hon'ble Apex Court in the case of *Sunderbhai Ambalal Desai* (Supra) and the material available on record, this Court is inclined to allow the petition.

7. Accordingly, the petition is allowed and the impugned order is hereby quashed. It is directed that the concerned vehicle Tata Zest Car bearing registration No.MP21A7452 be released on interim Supurdgi to the petitioner on submission of the relevant documents subject to following terms and conditions:-

1. That, the petitioner shall furnish Supurdginama to the sum of ***Rs.1,00,000/-*** *and the surety of the like amount to the satisfaction of the Trial Court for releasing the vehicle in question;*

Signature Not Verified
Signed by: SUSHEEL KUMAR JHARIYA
Signing time: 12/25/2024 6:39:38 PM

2. He shall also furnish an undertaking that he shall produce the vehicle in question as and when required during the trial and it shall not be sold during pendency of the case;

3. An undertaking shall also be given to the effect that the nature of the vehicle in question shall not be changed without prior permission of this Court; and

4. Bank guarantee of ***Rs.1,00,000/-*** *be also furnished to the satisfaction of Collector, District Katni.*

5. He shall not make any alternation in the vehicle and produce the same as and when required by the authorities.

8. A copy of this order be sent to the trial Court concerned for information and compliance.

Certified copy as per rules.

(VISHAL MISHRA)
JUDGE

sj

Signature Not Verified
Signed by: SUSHEEL KUMAR JHARIYA
Signing time: 1/25/2024 6:39:38 PM