

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.433 of 2024

Arising Out of PS. Case No.-854 Year-2022 Thana- BARACHATTI District- Gaya

Shankar Yadav

... .. Petitioner/s

Versus

The State of Bihar through the Principal Secretary, Home Dep. Gov. of Bihar,
Patna & Ors.

... .. Respondent/s

with

Criminal Writ Jurisdiction Case No. 564 of 2024

Arising Out of PS. Case No.-185 Year-2022 Thana- LAXMIPUR District- Jamui

Ramesh Kumar @ Ramesh Kumar Singh

... .. Petitioner/s

Versus

The State of Bihar & Ors.

... .. Respondent/s

with

Criminal Writ Jurisdiction Case No. 1354 of 2024

Arising Out of PS. Case No.-11 Year-2024 Thana- DANIYAWAN District- Patna

Nitish Kumar

... .. Petitioner/s

Versus

The State Of Bihar Through Chief Secretary, Government Of Bihar, Patna &
Ors.

... .. Respondent/s

with

Criminal Writ Jurisdiction Case No. 2388 of 2024

Arising Out of PS. Case No.- Year-0 Thana- District- Bhojpur

M/s Ashutosh Traders through its Proprietor Dharmendra Kumar

... .. Petitioner/s

Versus

The State of Bihar Through the Principal Sect., Mines And Geology Dept. ,
Govt. of Bihar, Patna & Ors.



... .. Respondent/s

Appearance :
(In Criminal Writ Jurisdiction Case No. 433 of 2024)
For the Petitioner/s : Mr. Vinod Kumar, Advocate
For the Respondent/s : Mr. Raghwanand, GA 11
Mr. Rajnish Shandilya, AC to GA 11
(In Criminal Writ Jurisdiction Case No. 564 of 2024)
For the Petitioner/s : Mr. Shailendra Kr. Singh, Advocate
For the Respondent/s : Mr. Sunil Kr. Mandal, SC 3
Ms. M. Kumari, AC to SC 3
(In Criminal Writ Jurisdiction Case No. 1354 of 2024)
For the Petitioner/s : Mr. Pushpendra Priyedarshi, Advocate
For the Respondent/s : Mr. Umesh Narayan Dubey, AC to GP 27
(In Criminal Writ Jurisdiction Case No. 2388 of 2024)
For the Petitioner/s : Mr. Babu Nandan Prasad, Advocate
For the Respondent/s : Mr. S.C 25

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL JUDGMENT

Date : 27-01-2025

The above-mentioned writ petitions involve the same fact and question of law; therefore, the aforesaid writ petitions are taken up together for hearing and being disposed of by a common judgment.

Cr. W.J.C. No. 433 of 2024

2. The petitioner has filed the instant writ petition praying for the issuance of a writ in the nature of certiorari quashing the order dated 24th June 2023 passed by the learned Additional Sessions Judge, Sherghati, Gaya, in Sessions Trial No. 500/23/1245/2023 arising out of Sherghati Barachatti P.S. Case No. 854/22 with a further direction commanding the respondent authorities to release a Bolero vehicle bearing registration no. **BR02Y6584** owned by the petitioner, which was seized by the



Investigating Officer of this case in connection with the above-mentioned P.S. Case under Section 395 of the IPC. One Jugesh Kumar Mahto, driver of a bearing registration no. **JH02AM 2760**, submitted a written complaint before the SHO Barachatti P.S. on 22nd August 2022, stating, *inter alia*, that he was driving the car towards Uttar Pradesh after loading coal at Topa in the State of Jharkhand on 21st September 2022 at about 11:00 PM; the driver of the truck reached Chinnari Bridge at Barachatti. At that time one white colour overtook and came in front of the truck of the driver and forced the driver to stop the truck. Then some miscreants traveling in the said Bolero took away the key of the truck. It is also alleged that the accused persons fled away with the truck towards Barachatti. It is submitted by the petitioner that the Bolero car bearing registration no. **BR02Y6584** was seized in connection with Barachatti P.S. No. 854/22 dated 22.09.2022 under Section 395 of the IPC. The petitioner submitted an application before the trial court for release of his vehicle, but the learned Additional Sessions Judge, Sherghati, Gaya, refused to release the said car. Hence, the instant writ petition.

Cr. W.J.C. No. 564 of 2024

3. The instant writ petition has been filed by one Ramesh Kumar @ Ramesh Kumar Singh with a prayer to set aside



an order dated 22nd September 2023 passed by the learned Additional Sessions Judge-I, Jamui, in Sessions Trial No. 326 of 2023, arising out of Laxmipur P.S. Case No. 185 of 2022, whereby and whereunder the learned Additional Sessions Judge-I, Jamui, refused the prayer of the petitioner to release a Splendor Plus motorcycle No. having registration no. BR-46L7036 with further direction to the concerned authorities to release the said vehicle during the pendency of the above-mentioned case.

4. Laxmipur P.S. Case No. 185 of 2022 was registered under Sections 419/420/467/120(B) of the IPC and Sections 66(C)/66(D), 66(F) of the Information Technology Act, and Sections 13, 16, and 17 of the U.A.P. Act.

5. The prosecution's case as set forth in the FIR dated 17th June 2022 is that the informant received confidential intelligence regarding the involvement of certain individuals in cybercrime in K.B.C. lottery scams and other fraudulent scams wherein they allegedly amassed a substantial sum by cheating the general public. Acting on the source of information, the police proceeded to Bankat Main Road and intercepted three persons riding on a Hero Honda Splendor Plus motorcycle bearing registration No. **BR-46-L7036**. The said persons disclosed their names as Amarjeet Kumar, Sharwan Kumar, and Ramesh Kumar.



On search, a sum of Rs. 1,00,000/- (Rupees One Lakh only) in cash with a mobile phone set having bank account details saved in WhatsApp of the said phone linked to a Pakistan-based bank and Cheque Book details. During interrogation, Amarjeet Kumar confessed to being an active participant in a cyber fraud syndicate engaged in duping innocent individuals. He further disclosed that his co-accused, Sharwan Kumar and Ramesh Kumar, were also associates in the said illegal activity. Police seized the motorcycle from the possession of Ramesh Kumar, being a vehicle used in committing the crime. The petitioner filed an application before the learned trial court seeking release of the vehicle, which was rejected vide an order dated 22nd September 2023 passed in Sessions Trial No. 326/2023.

6. Aggrieved by the said order, the petitioner has approached this Court under Articles 226 and 227 of the Constitution of India, seeking quashing of the impugned order and a direction for the release of the seized vehicle in his favour.

Cr. W.J.C. No. 2384 of 2024

7. One Dharmendra Kumar, proprietor of M/s Ashutosh Traders, has filed the instant writ petition seeking release of a 16-wheeler truck bearing registration no. BR-03GB-7422, which was seized by the Mining Development Officer, Saran, Chapra. The



vehicle was intercepted and seized on 7th October 2024 around 03:00 AM on the allegation of illegal mining and transportation of minerals.

8. At the time of seizure, the driver of the truck produced a valid challan issued by Maa Mahamaya Stone Crusher, bearing Serial No. 29569 and Pass No. 2956887, issued from Balrampur district in the State of Chhattisgarh. The vehicle was found to be carrying 49,640 kg of stone chips. A mining officer issued letters to verify the authenticity of the challan and sought information regarding the GPS location of the vehicle from 04.10.2024 to 07.10.2024.

9. The Assistant Mining Officer, Balrampur, Chhattisgarh, confirmed on 10.10.2024 that the challan was legal and the consignment had reached its destination legally. A discrepancy was noted in the unladen weight of the truck, with Chhattisgarh records showing 14,440 kg, while the Motor Vehicle Inspector (MVI), Saran, reported it as 9,695 kg. Since GPS location data for the truck was unavailable, the Mining Development officer determined that there was a violation of Rule 56(2) of the Bihar Minerals (Concession, Prevention of Illegal Mining, Transport, and Storage) Rules, 2019, as amended in 2021.



10. As a consequence, a fine of Rs. 306,100 was imposed on the petitioner, and the said truck was seized.

11. By filing the instant writ petition, the petitioner has prayed for a direction upon the respondents to release the truck on the ground that he was transporting minerals on the said truck legally, as proven by the valid challan. The alleged discrepancy in unladen weight was due to an administrative issue and has been rectified by the District Transport Officer, Bhojpur, at Ara, and the continued seizure of the vehicle is causing irreparable loss due to natural wear and tear, depreciation, and loss of livelihood.

Cr. W.J.C. No. 1354 of 2024

12. On 25th January 2024, at about 6:00 AM, the Sub-Inspector of Police attached to Daniyawar P.S. got information on his mobile phone that in Faridpur village, one Sikandar parked a Swaraj tractor loaded with sand near Sikandar Cement and Sand Shop. It was also informed that there might be narcotic drugs in the form of ganja and firearms hidden in the tractor. After receiving the said information, the police officer recorded the same in the PS GD Book and went to village Faridpur and conducted a search in the said tractor; however, on search, the informant did not find any incriminating material. Subsequently, he received information that one blue-colored tractor was parked near Faridpur



Dharmkanta by its driver and there is a firearm and narcotic drugs loaded in the said tractor. The police officer again conducted a search and recovered one country-made pistol with four live cartridges of 0.315 bore and a packet of *Ganja* weighing about 96 grams. The police seized the said articles and made a *suo moto* complaint against the driver of the said tractor, namely, Suraj Paswan, on the basis of which Daniyawan PS Case No. 11 of 2024 dated 25th January was registered under Section 25(1B)a/26/35 of the Arms Act and Section 20(b)(ii)(A) of the NDPS Act. By filing the instant writ petition, the petitioner has prayed for the issuance of appropriate writ order or orders for the quashing of the order dated 13th May 2024 passed by the learned Special Judge (NDPS, Patna) in Serial No. 21 of 2024 (State Vs Suraj Paswan and Ors.) whereby and whereunder the learned Trial Judge rejected the petition filed by the petitioner on 31st January 2024 for the release of the vehicle bearing registration no. **BR-01GH-0562** with trailer having register no. **BR-01GH-1904**.

13. I have heard the learned counsels for the petitioners of the above-mentioned writ petitions separately and the learned counsel for the State. I have also perused the materials on record. Cr. W.J.C. No. 564 of 2024 has been filed with a prayer to set aside an order dated 22nd September 2023 passed by the learned



Additional Sessions Judge-I, Jamui, in Trial No. 326/23. Similarly, Cr. W.J.C. No. 1354 of 2024 has been filed for setting aside an order dated 13th May 2024 passed by the learned Special Judge (NDPS) Patna rejecting the prayer for releasing a tractor. The impugned orders challenged in the above-mentioned writ petitions are revisable under Section 397 read with Section 401 of the CrPC corresponding to Sections 438 and 442 of the Bhartiya Nagrik Suraksha Sanghita (BNSS, in short), 2023. Thus, the above-mentioned writ petitions are not maintainable, challenging a judicial order of the learned Sessions Judge.

14. In Cr. WJC No. 433 of 2024, a Bolero vehicle was seized in connection with commission of offence under Section 395 of the IPC. It is alleged that the accused persons while traveling by the seized Bolero vehicle intercepted a truck loaded with coal and committed dacoity of coal. The petitioner is the owner of the said vehicle. He is not a party to the alleged offence. There is also no evidence to the effect that the petitioner entrusted the accused persons to use the said vehicle for committing the offence. Section 451 of the CrPC states as under:-

“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.”

15. Next provision, relevant for the purpose of these cases, is Section 456 of the CrPC which is quoted below:-

“456. Power to restore possession of immovable property.—*(1) When a person is convicted of an offence attended by criminal force or show of force or by criminal intimidation, and it appears to the Court that, by such force or show of force or intimidation, any person has been dispossessed of any immovable property, the Court may, if it thinks fit, order that possession of the same be restored to that person after evicting by force, if necessary, any other person who may be in possession of the property:*

Provided that no such order shall be made by the Court more than one month after the date of the conviction.

(2) Where the Court trying the offence has not made an order under sub-section (1), the Court of appeal, confirmation or revision may, if it thinks fit, make such order while disposing of the appeal, reference or revision, as the case may be.

(3) Where an order has been made under sub-section (1), the provisions of section 454 shall apply in relation thereto as they apply in relation to an order under section 453.



(4) No order made under this section shall prejudice any right or interest to or in such immovable property which any person may be able to establish in a civil suit.”

16. It is needless to say a vehicle is seized by the police or the investigating agency broadly under the following circumstances:-

(i) When the accused commits any offence using the vehicle as the means of offence. Secondly, when some contraband articles/substances is recovered from the vehicle. Again, where the owner of the vehicle is the person from whose possession the vehicle is seized and it is proved that the owner is involved in committing the offence or transported contraband drug/substance which is recovered.

(ii) Where the contraband is recovered from the possession of the agent of the owner, i.e., driver or cleaner hired by the accused.

(iii) Where the vehicle has been stolen by the accused and contraband is recovered from such stolen vehicle and,

(iv) Where the contraband is seized/recovered from a third party occupant of the vehicle without any allegation by the police that the vehicle was used for committing offence with the knowledge and connivance of the owner.



17. In the first two scenarios, the owner of the vehicle and/or his agent would necessarily be arrayed as an accused. In the third and fourth scenario, the owner of the vehicle and/or is agent would not be arrayed as an accused.

18. Criminal law has not to be applied in a vacuum but to the facts of each case. Consequently, it is only in the first two scenarios that the vehicle may not be released in favour of the owner till reverse burden of proof is discharged by the accused/owner. However, in third and fourth scenarios, where no allegation has been made in the charge-sheet against the owner and/or his agent, the vehicle should normally be released on owner's executing bond with certain conditions found to be relevant by the Court.

19. In *Sainaba Vs. State of Kerala and Another*, Special Leave Petition (Crl.) No. 13370/2024 charge-sheet was not filed against the owner of the vehicle nor the authorized driver. Third-party occupants were the accused. Under such circumstances, the Hon'ble Supreme Court in *Sainaba Vs. State of Kerala and Anr.*, **2022 SCC OnLine Sc 1784** directed release of vehicle relying on the decision of the Hon'ble Supreme Court in *Sunderbhai Ambalal Desai v. State of Gujarat*, reported in **(2002) 10 SCC 283**.



20. In Cr.WJC 433 of 2024, the petitioner being the owner of the bolero vehicle was not a party to the commission of the offence, therefore, the said vehicle be released on his executing Zima bond of Rs. 10,000,00/- (Rupees 10 lakhs only) with further condition that he will not change the nature, character and color of the vehicle or transfer the vehicle till the disposal of Barachatti P.S. Case no. 854/22.

21. In respect of the prayer for release of a splendor plus motorcycle having registration no. BR-46L7036 in Cr. WJC 564 of 2024, it is ascertained that the petitioner was involved in committing the offence under Section 419/420/467/120B of the IPC and Sections 66 (C) /66 (D), 66 (F) of the Information Technology Act read with Sections 13,16,17 of the U.A.P. Act. It was ascertained during investigation that the accused/owner of the vehicle used the same for committing digital fraud and cyber-crime and his phone number was linked vide WhatsApp to a Pakistan based bank. Considering the material disclosed during investigation this Court is not inclined to release the said vehicle.

22. Cr.W.J.C. No. 2388 of 2024 challenges an order of seizure of a 16-wheeler truck bearing registration no. BR03GB-7422 by the District Mining Officer, Saran, Chhapra. The reason for the seizure of the vehicle was that the Mining Development



Officer suspected illegal transportation of stone chips after taking the measurement and weight of the stone chips and unloaded truck. The truck's unladen weight was recorded in Chhattisgarh, and it was found that it weighs 14,440 kg. The said weight differed from the weight recorded by the MVI, Saran, as he found that the unladen weight of the truck was 9695 kg.

23. The petitioner has submitted all relevant documents, including a valid challan issued by Maa Mahamaya Stone Crusher, Balrampur, Chhattisgarh. The Assistant Mining Officer, Balrampur, Chhattisgarh, officially verified the challan's authenticity, confirming that the goods were transported legally and reached their destination. It is also contended on behalf of the petitioner that the alleged difference in unladen weight of the truck (14440 kg in Chhattisgarh vs. 9695 kg as per MVI, Saran) is an administrative inconsistency rather than an illegal act by the petitioner. The District Transport Officer, Bhojpur at Ara, has rectified the weight through an official communication dated 16th October 2024.

24. In *Sunderbhai Ambalal Desai vs. State of Gujarat* reported in **2002 (10) SCC 283**, the Hon'ble Supreme Court has held that the vehicles should not be kept in the custody of administrative authority for long period as their value depreciates.



Courts should direct the release of vehicles to the rightful owner subject to necessary conditions.

25. Applying this principle, the continued seizure of the truck is unjustified as it serves no legal or evidentiary purpose. Considering such circumstances, the Mining Development Officer, Saran, Chhapra, is directed to pass an order of interim release of the truck in favour of the petitioner on his executing a Zimma Bond of Rs. 500,000/- (Rupees five lakhs only), with the further condition that he will not change the nature, character, colour and specification of the seized truck till the disposal of the legal proceeding instituted against him by the Mining Department and shall produce the truck as and when called for by the respondents/authority.

26. With the above order, the Cr. W.J.C. No. 2388 of 2024 is allowed on contest. However, there shall be no order as to cost.

(Bibek Chaudhuri, J)

Suraj Dubey/-

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	06.02.2025
Transmission Date	06.02.2025

