

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1481 of 2024

Arising Out of PS. Case No.-876 Year-2023 Thana- RAMKRISHNANAGAR District- Patna

Bijay Kumar Raut, Son of Late Jaimal Raut, Resident Of Mohalla -GAYATRI
Indane Gas Godown, Ps- Jamalpur, District- Munger

... .. Petitioner/s

Versus

1. The State Of Bihar Through The Senior Superintendent Of Police, Patna Bihar
2. The Deputy Superintendent Of Police, Patna Bihar
3. The Officer-In- Charge, Ram Krishna Nagar Police Station, Patna Bihar

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Nivedita Nirvikar, Sr. Advocate Mr. Shankar Kumar Choudhary, Advocate Mr. Shantanu Kumar Singh, Advocate
For the Respondent/s	:	Mr. G.P.26 Mr. Naval Kishore Singh, JC to GP 26

CORAM: HONOURABLE MR. JUSTICE BIBEK CHAUDHURI
ORAL ORDER

3 26-03-2025 1. This is an application under Article 226 read with Article 227 of the Constitution of India filed by the petitioner for the following reliefs:-

“(i) For quashing the order dated 13.05.2024 passed by the Court of Sessions Judge, Patna in Criminal Misc. Case No. 75 of 2024 (arising out of Ram Krishna Nagar Case No. 876 of 2023) whereby and whereunder the prayer of the petitioner to release the four-wheeler vehicle of the petitioner namely Maruti Suzuki Fronx Car bearing Registration No. BR-01 HG-9897 which has been seized by the police in connection with Ram Krishna Nagar Police



Case No. 876/2023 dated 25.12.2023 for offences under section 8(c), 21(c), 25 and 29 of the NDPS Act.

ii. For direction to the respondents concerned to release the four-wheeler vehicle of the petitioner namely Maruti Suzuki Fronx Car bearing Registration No. BR-01 HG-9897 which has been seized by the police in connection with Ram Krishna Nagar Police Case No. 876/2023 dated 25.12.2023 for offences under section 8(c), 21(c), 25 and 29 of the NDPS Act.”

2. On 25th of December, 2023, the police, attached to Ramkrishna Nagar Police Station, were conducting vehicle checking duty under the leadership of one Ravi Ranjan Kumar Singh, ASI. During vehicle checking duty, the above-named police officer received information that five persons were travelling in a Maruti Suzuki Fronx Car and one person was following the said car by a Honda Shine Motorcycle. It was also informed that the said persons assembled at Masaurhi More for selling Narcotic Drugs (smack). Police tried to stop the said car but seeing the police party, the travellers were trying to flee away. However, the police party managed to apprehend them. On being asked, they disclosed their names as Abhishek Kumar Gupta, Monu Singh @ Aditya Raj, Abhishek Kumar, Yuvraj @ Abhiraj Kumar, Amit Raj @ Atul and Sunny Kumar. On search,



police recovered one black coloured plastic packet containing 506 grams of smack from the lap of the accused Abhishek Kumar Gupta and various other articles were recovered from the other accused persons. On interrogation, the said Abhishek Kumar Gupta and Amit Raj @ Atul disclosed that there associates, namely, Himanshu Kumar along with Rahul Kumar and Rohit Kumar procured the above-named Narcotic Drug. After handing over the packet of smack, Rohit Kumar and Rahul Kumar successfully fled away seeing police party. It was disclosed by Amit Raj @ Atul that the Maruti Suzuki Fronx Car belongs to his father, namely, Vijay Kumar Raut. Police seized the Narcotic Drug and the offending car; arrested the accused persons; and registered Ramkrishna Nagar P.S. Case No. 876 of 2023, dated 25th of December, 2023, under Sections 8(c), 21(c), 25 and 29 NDPS Act.

3. The petitioner, being the registered owner of the seized Maruti Suzuki Fronx Car, filed an application before the Court of the learned Sessions Judge, Patna for return of the said vehicle. The learned Sessions Judge, Patna relying on the provision contained in Section 60 (3) of the NDPS Act, rejected the application made by the petitioner and refused to return the said seized car to its registered owner. Challenging the said



order, the present writ application has been filed by the petitioner.

4. At the outset, a question was raised as to whether an application under Article 226 of the Constitution of India is maintainable against a judicial order passed by the learned Sessions Judge in exercise of his judicial functions.

5. In *Mohd. Wajid & Anr. v. State of U.P. & Ors.*, reported in **2023 SCC OnLine SC 951**, it was observed in Paragraph Nos. 32 to 34 as hereunder:-

“32. However, as observed earlier, the entire case put up by the first informant on the face of it appears to be concocted and fabricated. At this stage, we may refer to the parameters laid down by this Court for quashing of an FIR in the case of Bhajan Lal (supra). The parameters are:—

“(1) Where the allegations made in the first information report or the complaint, even if they are taken at their face value and accepted in their entirety do not prima facie constitute any offence or make out a case against the accused.

(2) Where the allegations in the first information report and other materials, if any, accompanying the FIR do not disclose a cognizable offence, justifying an investigation by police officers under Section 156(1) of the Code except under an order of a Magistrate within the



purview of Section 155(2) of the Code.

(3) Where the uncontroverted allegations made in the FIR or complaint and the evidence collected in support of the same do not disclose the commission of any offence and make out a case against the accused.

(4) Where, the allegations in the FIR do not constitute a cognizable offence but constitute only a non-cognizable offence, no investigation is permitted by a police officer without an order of a Magistrate as contemplated under Section 155(2) of the Code.

(5) Where the allegations made in the FIR or complaint are so absurd and inherently improbable on the basis of which no prudent person can ever reach a just conclusion that there is sufficient ground for proceeding against the accused.

(6) Where there is an express legal bar engrafted in any of the provisions of the Code or the concerned Act (under which a criminal proceeding is instituted) to the institution and continuance of the proceedings and/or where there is a specific provision in the Code or the concerned Act, providing efficacious redress for the grievance of the aggrieved party.

(7) Where a criminal proceeding is manifestly attended with mala fide and/or where the proceeding is maliciously instituted with an ulterior motive for wreaking vengeance on the



accused and with a view to spite him due to private and personal grudge.”

33. In our opinion, the present case falls within the parameters Nos. 1, 5 and 7 respily referred to above.

34. At this stage, we would like to observe something important. Whenever an accused comes before the Court invoking either the inherent powers under Section 482 of the Code of Criminal Procedure (CrPC) or extraordinary jurisdiction under Article 226 of the Constitution to get the FIR or the criminal proceedings quashed essentially on the ground that such proceedings are manifestly frivolous or vexatious or instituted with the ulterior motive for wreaking vengeance, then in such circumstances the Court owes a duty to look into the FIR with care and a little more closely. We say so because once the complainant decides to proceed against the accused with an ulterior motive for wreaking personal vengeance, etc., then he would ensure that the FIR/complaint is very well drafted with all the necessary pleadings. The complainant would ensure that the averments made in the FIR/complaint are such that they disclose the necessary ingredients to constitute the alleged offence. Therefore, it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the



necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of investigation. Take for instance the case on hand. Multiple FIRs have been registered over a period of time. It is in the background of such circumstances the registration of multiple FIRs assumes importance, thereby attracting the issue of wreaking vengeance out of private or personal grudge as alleged.

6. On the same point, the Hon'ble Supreme Court in ***Arnab Manoranjan Goswami v. State of Maharashtra & Ors***, reported in ***(2021) 2 SCC 427***, was pleased to hold that when FIR contains allegation of malicious criminal proceedings and harassment by the authorities and prima facie does not reveal any offence, the Writ Court in exercise of jurisdiction under



Article 226 of the Constitution can quash the FIR.

7. The last judgement on this line is delivered by the Hon'ble Supreme is ***Kim Wansoo v. State of U.P. & Ors.***, reported in ***2025 SCC OnLine SC 17***. Paragraph No. 11 of the said judgement is relevant and quoted below:-

“11. In the contextual situation, it is also relevant to refer to the decision of this Court in Mohammad Wajid. v. State of U.P.5, whereunder this Court, in so far as it is relevant, held thus:—

“34.....it will not be just enough for the Court to look into the averments made in the FIR/complaint alone for the purpose of ascertaining whether the necessary ingredients to constitute the alleged offence are disclosed or not. In frivolous or vexatious proceedings, the Court owes a duty to look into many other attending circumstances emerging from the record of the case over and above the averments and, if need be, with due care and circumspection try to read in between the lines. The Court while exercising its jurisdiction under Section 482 of the CrPC or Article 226 of the Constitution need not restrict itself only to the stage of a case but is empowered to take into account the overall circumstances leading to the initiation/registration of the case as well as the materials collected in the course of



investigation....”

8. It is important to note that in all the aforementioned cases, the Hon’ble Supreme Court decided as to whether an application under Article 226 of the Constitution of India is maintainable for quashing an FIR.

9. However, in ***Radhey Shyam & Anr., v. Chhabi Nath & Ors.***, reported in ***(2015) 5 SCC 423***, a three Judges of the Hon’ble Supreme Court held that a judicial order passed by a Civil Court is not amenable to writ jurisdiction under Article 226 of the Constitution of India.

10. In subsequent decision, in ***State of Jharkhand v. Surendra Kumar Srivastava & Ors.*** reported in ***(2019) 4 SCC 214***. The Hon’ble Supreme Court took the same view.

11. Again in ***Neelam Manmohan Attavar v. Manmohan Attavar*** reported in ***(2021) 16 SCC 536***, the Apex Court held that writ challenging judgement delivered by Single Judge of the High Court in exercise of criminal revisional jurisdiction is not maintainable before the Supreme Court as alternative remedies is available before the High Court as well as the Supreme Court.

12. The same view was taken by the High Court of Jammu & Kashmir in the case of ***Abdul Majeed Ganie v. Abdul Rahim Bhat*** reported in ***2022 SCCOnline J&K 728***.



13. In the instant case, the petitioner has not come forward to quash a criminal proceeding on the ground of malicious FIR or other grounds delinted in the case of ***State of Haryana & Ors. v. Bhajan Lal & Ors.*** The petitioner filed the instant writ petition under Article 226 read with Article 227 of the Constitution of India, challenging an order passed by the learned Sessions Judge rejecting an application for return of the seized vehicle.

14. Referring to a decision, passed by a Co-ordinate Bench in Cr. WJC No. 1491 of 2022, dated 20th of July, 2023, Ms. Nivedita Nirvikar, learned Senior Counsel appearing on behalf of the petitioner submits that the Co-ordinate Bench of this Court entertained the writ petition against an order of rejection of return of seized vehicle.

15. I have carefully gone through the above-mentioned unreported decision in Cr.W.J.C. No. 1491 of 2022, dated 20th of July, 2023 and found that in the said decision, the ratio laid down by the Hon'ble Supreme Court in ***Radhey Shyam & Anr (supra)***, ***Surendra Kumar Srivastava & Ors (supra)***, ***Neelam Manmohan Attavar (supra)*** and ***Abdul Majeed Ganie (supra)*** were not considered. Therefore, in my considered view, judgment in Cr. WJC No. 1491 of 2022 did not



give answer to the question with regard to maintainability of the writ petition against a judicial order which has been raised by this Court.

16. At the same time, this Court considers that the petitioner has filed the application also under Article 227 of the Constitution of India. Article 227 of the Constitution of India vests the power of superintendence of the High Court over the Courts inferior to it. Under Article 227 of the Constitution of India, a Judicial Order can also be challenged in addition to the revisional jurisdiction of the High Court under Section 438 read with Section 442 of the BNSS.

17. Under such circumstances, this Court proposes to deal with the instant application under Article 227 of the Constitution of India to consider the correctness, legality and propriety of the impugned order dated 13.05.2024.

18. In the instant case, the petitioner submits that he is the owner of the seized Maruti Suzuki Fronx Car. The seized car was allegedly used in transporting Narcotic Drugs in the absence of the knowledge and permission of the petitioner.

19. It is needless to say that if the owner of the vehicle / conveyance proved that his vehicle was used in the commission of the offence without his knowledge and



connivance and he has taken all reasonable precautions against such use, the conveyance cannot be confiscated despite it being used in the commission of the alleged offence. Section 60(3) applies only when the vehicle carrying Narcotic Drugs was used with the knowledge or connivance of the owner or his agent. Only because the son of the petitioner was found inside the seized car, it would not automatically mean that the owner of the car permitted his son to use the said car in carrying the Narcotic Drugs or that Narcotic Drugs was being carried in connivance of the owner himself and the person in-charge of the vehicle / conveyance.

20. I have come to this decision because of the fact that the petitioner was not made an accused in the above-mentioned case. There is no allegation in the FIR that the seized vehicle was used in carrying Narcotic Drugs with the knowledge or connivance of the petitioner and his son.

21. For the reasons stated above, this Court is of the opinion that the petitioner is entitled to get return of the seized vehicle on certain conditions.

22. At this stage, it is apposite for the Court to refer to the decision of the Hon'ble Supreme Court in the case of ***Sunderbhai Ambalal Desai v. State of Gujarat.***, reported in



(2002) 10 SCC 283 and General Insurance Council Ors. v. State of A.P & Ors., reported in (2010) 6 SCC 768.

23. Detention of a seized car under open sky will diminish its road-worthiness and general condition.

24. Therefore, the instant application is allowed, on contest.

25. The petitioner is entitled to get back the seized Maruti Suzuki Fronx Car subject to the following conditions:-

(i) That the petitioner shall furnish bank guarantee of Rs. 5 Lakhs to the satisfaction of the learned Sessions Judge Patna;

(ii) before handing over the car to the petitioner, a detailed Punchnama of the said car, after taking its photograph, shall be prepared;

(iii) the petitioner shall execute bond that the car in question shall be produced as and when required at the time of trial or confiscation proceeding; and

(iv) the petitioner shall not change the nature, character and colour of the car till the disposal of the criminal case and also shall not make any third party interest over the said car till the pendency of the trial and/or confiscation proceeding, if any.



26. However, there shall be no order as to costs.

(Bibek Chaudhuri, J)

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