

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.1491 of 2022

Arising Out of PS. Case No.-288 Year-2021 Thana- SAHEBPUR KAMAL District-
Begusarai

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SUKH SAGAR KUMAR S/O Gyani Prasad Yadav RESIDENT OF VLLAGE
SHALI GRAMI P.S SAHEBPURKAMAL DISTRICT BEGUSARAI

... .. Petitioner/s

Versus

1. The State of Bihar
2. The District Magistrate, Begusarai Bihar
3. The Superintendent of Police, Begusarai Bihar
4. The Station House Officer, Sahebpurkamal Police Station Begusarai

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Bharat Bhushan
For the Respondent/s : Mr. Md. Irshad, AC to SC 1

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

JUDGMENT AND ORDER
ORAL

Date : 20-07-2023

The present writ application has been filed for setting aside the order dated 06.09.2022, passed by the learned 1st Additional Sessions Judge, Begusarai, in NDPS Case No. 30/2021, arising out of Sahebpur Kamal Police Station Case No. 288 of 2021, dated 03.12.2021, registered for the offences punishable under Sections 414/120-B of the Indian Penal Code, Sections 8(c)/21(c)/25/35 of the Narcotic Drugs and Psychotropic Substances Act, 1985, and Sections 25(1-b)a/26/35 of the Arms Act, whereby the learned 1st Additional Sessions Judge, Begusarai,



has rejected the prayer of the petitioner for release of TATA Tigor car, bearing Registration No. BR 09 AJ/0706, in his favour, which was seized in connection with Sahebpur Kamal Police Station Case No. 288 of 2021. The petitioner has further prayed for a direction to the District Court to release the car, in question, in his favour.

2. The brief facts, giving rise to the present writ application, is that the car of the petitioner, bearing Registration No. BR 09 AJ/0706, was parked outside the house of the FIR-named accused and on search being made, 385 gms. of brown sugar was recovered from the said car. It has been alleged that the car, in question, was being used by the FIR-named accused persons for transportation of contraband substance and brown sugar has also been recovered from the same. The petitioner has been added as non-FIR named accused.

3. Learned Counsel for the petitioner submits that petitioner is the owner of the seized car, bearing Registration No. BR 09 AJ/0706. He was not aware about the brown sugar being kept inside the car. He further submits that the petitioner is not named in the First Information Report and his car was actually seized on 02.12.2021 by the police, which would be evident from the Gps data, but the actual seizure has been shown by the police



after lodging of the First Information Report against other accused persons on 03.12.2021. In support of his claim of ownership, the petitioner has annexed the registration certificate (owner book) at Annexure-2. He further submits that the confiscation proceeding has not yet been initiated and in view of Section 63 of the Narcotic Drugs and Psychotropic Substances Act, 1985, the confiscation proceeding may not be initiated till the conclusion of the trial. He further submits that the car, in question, is kept in an open space in the police station and is subject to deterioration and losing its road worthiness on daily basis.

4. Learned Counsel further submits that the learned District Court has failed to appreciate the legal provisions contained in Sections 451 and 457 of the Code of Criminal Procedure, 1973, and the law laid down by the Supreme Court, in the case of **Sunderbhai Ambalal Desai v. State of Gujarat**, reported in **(2002)10 SCC 283**, as well as the judgment of a coordinate Bench of this Court, in the case of **Jai Kishan Kumar v. Union of India**, reported in **2021 (1) BLJ 374**.

5. On the other hand, learned Counsel for the State opposes the prayer of the petitioner for release of the car in his favour during pendency of the trial and/or confiscation proceeding and submits that petitioner had knowledge about the contraband



Substance being kept inside the car in question and the car was standing in front of the house of the accused persons for transportation of the contraband substance. He further submits that commercial quantity of brown sugar has been recovered from the car, in question.

6. I have heard learned counsel for petitioner and learned Additional Public Prosecutor for the State.

7. From perusal of Section 60 of the Narcotic Drugs and Psychotropic Substances Act, 1985, it appears that any conveyance used in carrying Narcotic Drugs and Psychotropic Substance is liable for confiscation, provided it is proved that the vehicle/conveyance was being used with the knowledge or connivance of the owner himself or his agent. In absence of any such material, there cannot be any confiscation at the first instance.

8. Learned Counsel for the petitioner has submitted that the petitioner was not aware about the brown sugar being kept in the car, in question, as according to him, the car was being used by the police authority since 02.12.2021, which would be evident from the GPS data. This fact has been denied by learned Counsel for the State, who submits that the recovery of brown sugar is from inside the car, in question.



9. In view of the aforesaid facts, now the question of release of the car would be under the provisions of Sections 451 and 457 of the Code of Criminal Procedure, 1973, which deal with the power of the Court to order for the disposal/custody of the property pending trial in certain case and the procedure by the police upon seizure of the property.

10. From perusal of Sections 451 and 457 of the Code of Criminal Procedure, 1973, it would appear that a Court is empowered to pass an appropriate order with regard to such property. The object and scheme of the various provisions of the Code of Criminal Procedure, 1973, dealing with seizure of property by the police has been dealt with by the Supreme Court, in the case of *Sunderbhai Ambalal Desai* (supra), whereunder, in paragraphs 5 and 7, it has been observed as follows:-

“5. Section 451 clearly empower the Court to pass appropriate orders with regard to such property, such as

(1) for the proper custody pending conclusion of the inquiry or trial;

(2) to order it to be sold or otherwise dispose of, after recording such evidence as it thinks necessary;

(3) If the property is subject to speedy and natural decay to dispose of the same.



7. In our view, the powers under Section 451 CrPC should be exercised expeditiously and judiciously. It would serve various purposes, namely:-

1. Owner of the article would not suffer because of its remaining unused or by its misappropriation;

2. Court or the police would not be required to keep the article in safe custody;

3. If the proper panchnama before handing over possession of article is prepared, that can be used in evidence instead of its production before the Court during the trial. If necessary, evidence could also be recorded describing the nature of the property in detail; and

4. This jurisdiction of the Court to record evidence should be exercised promptly so that there may not be further chance of tampering with the articles.”

11. In paragraphs 17 and 21 of ***Sunderbhai Ambalal Desai*** (supra), the Supreme Court has observed as follows:-

“17. 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.



21. However these powers are to be exercised by the concerned Magistrate. We hope and trust that the concerned Magistrate would take immediate action for seeing that powers under Section 451 Cr.P.C. are properly and promptly exercised and articles are not kept for a long time at the police station, in any case, for not more than fifteen days to one month. This object can also be achieved if there is proper supervision by the Registry of the concerned High Court in seeing that the rules framed by the High Court with regard to such articles are implemented properly.”

12. In yet another judgment, in the case of **Smt. Basavva Kom Dyamangouda Patil v. State of Mysore and Another**, reported in (1977) 4 SCC 358, the Supreme Court, while dealing with the seizure of property by the police and the object and scheme of the various provisions of the Code of Criminal Procedure, 1973, has observed, in paragraph 4, as follows:-

“4. The object and scheme of the various provisions of the Code appear to be that where the property which has been the subject-matter of an offence is seized by the police it: ought not to be retained in the custody of the Court or of the police for any time longer than what is absolutely necessary, As the seizure of the property by the police amounts to a clear entrustment of the property to a Government servant, the idea is that the property should be restored



to the original owner after the necessity to retain it ceases. It is manifest that there may be two stages when the property may be returned to the owner. In the first place it may be returned during any inquiry or trial. This may particularly be necessary where the property concerned is subject to speedy or natural decay. There may be other compelling reasons also which may justify the disposal of the property to the owner or otherwise in the interest of justice. The High Court and the Sessions Judge proceeded on the footing that one of the essential requirements of the Code is that the articles concerned must be produced before the Court or should be in its custody. The object of the Code seems to be that any property which is in the control of the Court either directly or indirectly should be disposed of by the Court and a just and proper order should be passed by the Court regarding its disposal. In a criminal case, the police always acts under the direct control of the Court and has to take orders from it at every stage of an inquiry or trial. In this broad sense, therefore, the Court exercises an overall control on the actions of the police officers in every case where it has taken cognizance.”

13. In yet another judgment, in the case of *General Insurance Council and Others. v. State of Andhra Pradesh and Others*, reported in (2010) 6 SCC 768, the Supreme Court has further directed to ensure implementation of statutory provisions as contained in Sections 451 and 457 of the Code of Criminal



Procedure, 1973, so as to avoid natural decay on account of weather conditions of seized vehicle in police station and in paragraphs 11 and 14 of *General Insurance Council (supra)*, the Supreme Court has directed as follows:-

“11. Notice of the said petition was issued to all the States and Union Territories. Almost all the States have contended that they have already issued necessary guidelines and directions for full and complete compliance of the provisions contained in Sections 451 and 457 of the Code as elaborated in *Sunderbhai Ambalal Desai (supra)* as also under Section 158(6) of the M.V. Act and 159 of the Rules as directed in *General Insurance Council case (supra)*. Thus, in one voice, they have contended that there would not be any difficulty in compliance of the directions that may be issued in furtherance of achieving the object as directed by this Court. Thus, in our view, there appears to be consensus in this matter.

14. It is a matter of common knowledge that as and when vehicles are seized and kept in various police stations, not only they occupy substantial space of the police stations but upon being kept in open, are also prone to fast natural decay on account of weather conditions. Even a good maintained vehicle loses its road worthiness if it is kept stationary in the police station for more than fifteen days. Apart from the above, it is also a matter of common knowledge that several valuable and costly parts of the said vehicles



are either stolen or are cannibalised so that the vehicles become unworthy of being driven on road. To avoid all this, apart from the aforesaid directions issued herein above, we direct that all the State Governments/ Union Territories/Director Generals of Police shall ensure macro implementation of the statutory provisions and further direct that the activities of each and every police stations, especially with regard to disposal of the seized vehicles be taken care of by the Inspector General of Police of the concerned Division/Commissioner of Police of the concerned cities/Superintendent of Police of the concerned district.”

14. I have also gone through the judgments passed by the co-ordinate Bench of this Court for release of vehicle as reported in the case of *Jai Kishan Kumar* (supra) and by this Court, in the case of **Ram Krishna Dutta v. The State of Bihar and Another (Criminal Revision No. 28 of 2021)** and after going through the same, it appears that this Court, after relying upon the judgments of the Supreme Court, in *Sunderbhai Ambalal Desai* (supra), has directed for release of the vehicle in favour of the petitioner with certain conditions.

15. In the aforesaid discussions and the law laid down by the Supreme Court and that of this Court, I am of the considered opinion that the learned District Court below has failed



to exercise its jurisdiction in correct legal perspective and thereby committed material irregularity inasmuch as if the vehicle in question is allowed to be kept in open in the police station, it may lose its road worthiness due to natural decay on account of weather condition.

16. Accordingly, the order dated 06.09.2022, passed by the learned 1st Additional Sessions Judge, Begusarai, in NDPS Case No. 30/2021, arising out of Sahebpur Kamal Police Station Case No. 288 of 2021, is set aside and the learned District Court is directed to release the car, in question, in favour of the petitioner after verifying the ownership/registration of the car within a period of four weeks from the date of receipt/production of a copy of this order, subject to the following conditions:-

(1) That the petitioner shall furnish bank guarantee of Rs. 3 Lacs to the satisfaction of the learned District Court;

(2) That before handing over the car to the petitioner, a detailed and proper *Punchnama* of the said car, after taking its photograph, shall be prepared;

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



(4) That petitioner shall also furnish an undertaking on oath that he shall not alienate or part with the ownership of the car, in question, till pendency of the trial or confiscation proceeding, if any.

17. With the aforesaid directions and observations, this application is allowed.

18. There shall be no order as to costs.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	20-07-2023
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