

IN THE HIGH COURT OF JUDICATURE AT PATNA

Subhag Singh

vs.

The State of Bihar & Ors.

Criminal Writ Jurisdiction Case No. 831 of 2021

2 August 2023

[Hon’ble Mr. Justice Anil Kumar Sinha]

Issue for Consideration

Whether the petitioner is entitled to the release of his seized vehicle pending trial.

Headnotes

If the vehicle 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.
(Para 13)

Petition is allowed. (Para 15)

Case Law Cited

Sunderbhai Ambalal Desai v. State of Gujarat, **(2002) 10 SCC 283**; Smt. Basavva Kom Dyamangouda Patil v. State of Mysore, **(1977) 4 SCC 358**; General Insurance Council v. State of Andhra Pradesh, **(2010) 6 SCC 768**

List of Acts

Code of Criminal Procedure, 1973 – Sections 451 and 457; Indian Penal Code, 1860 – Sections 379 and 411

List of Keywords

Interim custody of vehicle; Seizure of property; Criminal trial; Section 451 CrPC; Section 457 CrPC; Vehicle deterioration; Jurisdictional error; Property release conditions; Case property

Case Arising From

Mahendia Police Station Case No. 55 of 2018, District – Jehanabad, Bihar

Appearances for Parties

For the Petitioner: Mr. Bindeswari Singh

For the Respondents: Mr. Sheo Shankar Prasad

Headnotes Prepared by Reporter:Amit Kumar Mallick, Adv.

Judgment/Order of the Hon’ble Patna High Court

IN THE HIGH COURT OF JUDICATURE AT PATNA
Criminal Writ Jurisdiction Case No.831 of 2021

Arising Out of PS. Case No.-55 Year-2018 Thana- MEHANDIA District- Jehanabad

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SUBHAG SINGH S/O SUDARSHAN SINGH R/O VILLAGE-DUBAULI
NEAR SHIV MANDIR, P.S-GADHANI, DISTRICT-BHOJPUR.

... .. Petitioner/s

Versus

1. THE STATE OF BIHAR THROUGH THE CHIEF SECRETARY, GOVT. OF BIHAR, PATNA
2. THE COLLECTOR-CUM-DISTRICT MAGISTRATE, ARBAL ARBAL.
3. THE SENIOR SUPERINTENDENT OF POLICE, ARBAL. ARBAL
4. THE OFFICER IN CHARGE MAHENDIA P.S., ARBAL. ARBAL

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Bindeswari Singh
For the Respondent/s	:	Mr. Sheo Shankar Prasad

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CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA

JUDGMENT AND ORDER

C.A.V

Date : -08-2023

Heard learned counsel for the parties concerned.

2. The present writ application has been filed for quashing the order, dated 09.09.2019, passed by the learned Chief Judicial Magistrate, Arwal, in Mahendia Police Station Case No. 55 of 2018, whereby the learned Magistrate has rejected the petition, dated 27.07.2019, filed by the petitioner for release of his Bolero vehicle, bearing Registration No. BR-02T-8653 and further for quashing the order, dated 04.01.2020, passed by the learned Sessions Judge, Jehanabad, in Revision Case No. 54 of 2019, by



which the learned Sessions Judge has affirmed the order dated 09.09.2019 passed by the learned Chief Judicial Magistrate with liberty to the petitioner to renew his prayer for release of the vehicle within a period of two months if the trial of the case is not concluded. The petitioner again, on 05.03.2020, filed an application before the learned Chief Judicial Magistrate, Arwal for release of his vehicle, but the learned Chief Judicial Magistrate vide order, dated 01.07.2020, dismissed the prayer of the petitioner on the ground that his application is not maintainable in the present situation. The petitioner has further prayed for issuance of direction for release of the said Bolero vehicle, which is kept in open at Mehandia Police Station and the said vehicle, in question, was seized in connection with Mehandia Police Station Case No. 55 of 2018 registered for the offences under Sections 379 of 411 of the Indian Penal Code.

3. The brief facts giving rise to the present writ application is that First Information Report was lodged by one Nishant Kumar, Supervisor of Jio Company, alleging therein that six to seven accused persons came on two vehicles, one pickup van and another Bolero vehicle and have taken away batteries installed in different towers within Mendiya Police Station. On the basis of the information given by the informant, the police



apprehended the said two vehicles and recovered altogether 64 batteries, loaded therein, both vehicles were seized and the petitioner along with six other co-accused persons who were sitting in the vehicles were arrested.

4. Learned counsel for the petitioner submits that he is the owner of the seized Bolero vehicle, bearing Registration No. BR-02T-8653, and has filed an application on 27.07.2019 for release of the vehicle, but the learned Chief Judicial Magistrate, vide order dated 09.09.2019, rejected the prayer of the petitioner for release of his vehicle on the ground that he is accused in this case and charge sheet has already been submitted against him. The petitioner, thereafter, filed a revision application bearing Criminal Revision No. 54 of 2019 before the learned Sessions Judge, Jehanabad, who by order, dated 04.01.2020, has dismissed the revision application with liberty to the petitioner to renew his prayer for release of his vehicle if the trial of the case is not concluded within a period of two months.

5. Learned counsel for the petitioner further submits that the pick-up van has already been released in favour of the owner of the said vehicle, namely, Amrendra Kumar, vide order, dated 19.11.2018, passed by the learned Chief Judicial Magistrate, Arwal. The petitioner again, on 05.03.2020, filed an application



before the learned Chief Judicial Magistrate, Arwal for release of his vehicle, but the learned Chief Judicial Magistrate vide order, dated 01.07.2020, dismissed the prayer of the petitioner on the ground that his application is not maintainable in the present situation. He further submits that the vehicle has been kept in open place since 2018 and the same is likely to be damaged due to weather and other external forces.

6. Learned counsel for the State opposing the prayer of the petitioner submits that petitioner is named accused persons in Mahendia Police Station Case No. 55 of 2018 and he was arrested from the said vehicle and stolen batteries were also recovered from the said vehicle. Accordingly, the learned Chief Judicial Magistrate has rightly rejected the prayer for release of the Bolero vehicle.

7. I have heard learned counsel for the parties.

8. Section 451 and 457 of the Criminal Procedure Code deals with the power of the court to order for custody and disposal of the property pending trial in certain cases and the procedure by police upon seizure of property.

9. From perusal of the aforesaid provisions it would appear that the court is empowered to pass an appropriate order with regard to such property. The object and scheme of the



various provisions of the Criminal Procedure Code dealing with seizure of property by the police has been dealt with by the Apex Court in the case of **Sunderbhai Ambalal Desari v. State of Gujarat reported in (2002) 10 SCC 283** in paragraphs- 5 and 7 wherein 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 Cr.P.C. 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."

10. In paragraphs- 17 and 21 of the said judgment the Hon'ble Apex 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."

11. The Hon'ble Apex Court in another judgment reported in the case of **Smt. Basavva Kom Dyamangouda Patil v. State of**



Mysore & Anr. reported in **1977 (4) SCC 358**, while dealing with the seizure of property by the police and the object and scheme of the various provisions of the Cr.P.C. 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."

12. Yet, in 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 directed to ensure implementation of statutory provision as contained in Sections 451 and 457 of the Criminal Procedure Code 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) 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 hereinabove, 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."

13. In view of the aforesaid discussion of law and the fact involved in the matter, I am of the considered opinion that the learned Chief Judicial Magistrate, Arwal, as well as the learned Sessions Judge, Jehanabad, have failed to exercise their 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. It is not disputed that the petitioner is the owner of the vehicle as would be evident from the report submitted by the police in this regard and the same is lying in open place in the police station since 2018.

14. Accordingly, the order dated 09.09.2019 passed by the learned Chief Judicial Magistrate, Arwal and order dated 04.01.2020 passed by learned Sessions Judge, Jehanabad, as well as order dated 01.07.2020 passed by the learned Chief Judicial Magistrate, Arwal are set aside and the learned Chief Judicial Magistrate, Arwal, is directed to release the vehicle, in question, in favour of the petitioner after verifying the ownership/registration of the vehicle within a period of three weeks from the date of receipt/production of a copy of this order, subject to the following conditions:-

- (i) That the petitioner shall furnish adequate security of Rs. 1 lakh to the satisfaction of the court.



- (ii) That before handing over the vehicle to the petitioner, a detailed and proper *punchnama* of the said vehicle after taking its photograph shall be prepared.
- (iii) That the petitioner shall also execute bond that the vehicle in question shall be produced as and when required at the time of trial.
- (iv) That the petitioner shall also furnish an undertaking on oath that he shall not alienate or part with the ownership of the vehicle till pendency of the trial.

15. In the result, this writ application is allowed with the aforesaid observations and directions.

(Anil Kumar Sinha, J)

ashwani/-

AFR/NAFR	AFR
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