

**Neutral Citation No. - 2024:AHC-LKO:24806**

**A.F.R.**

**Reserved on 07.03.2024**

**Delivered on 21.03.2024**

**Court No. - 16**

**Case :-** CRIMINAL MISC. WRIT PETITION No. - 15 of 2024

**Petitioner :-** Chandra Sekhar Rajbhar

**Respondent :-** State Of U.P. Thru. Prin. Secy. Home Lko. And 5 Others

**Counsel for Petitioner :-** J.P. Shukla, Manish Mani Sharma, Mohammad Sabir, Sudeep Kumar Srivastava

**Counsel for Respondent :-** G.A.

**Hon'ble Shamim Ahmed, J.**

1. Heard Sri Manish Mani Sharma, learned counsel for the petitioner and Sri Ashok Kumar Singh, learned A.G.A.-I for the State and perused the record.
2. This petition under Article 227 of the Constitution of India has been filed with the following relief (s):

*(i) a writ, order or direction in the nature of certiorari to quash the impugned order dated 11.08.2023, passed by the learned District Magistrate, District Sultanpur in Case No. 1860 of 2023, Computerized Case No. D202304680001860; State Vs. Suresh Rajbhar and others, by which (Pickup) Vehicle bearing registration No. UP44BT4580 of petitioner has been confiscated/seized in exercise of powers under section 5A(7) of U.P. Prevention of Cow Slaughter Act, 1955 in pursuant to First Information Report vide Case Crime No. 155/2023, U/s 3/5A/8 U.P. Prevention of Cow Slaughter Act, 1955 and U/s 11 Prevention of Cruelty to Animal Act, Police Station Akhand Nagar, District Sultanpur and the order dated 08.12.2023 passed by the Commissioner, Ayodhya Division Ayodhya in Appeal No. 1944 of 2023, Computerized Case No. C202304000001944, Chandrasekhar Rajbhar Vs. State of U.P. by which appeal filed by petitioner against the*

*order dated 11.08.2023, has been rejected, contained as Annexure No. 1 and 2 to this writ petition.*

*ii. a writ, order or direction in the nature of mandamus, commanding the opposite parties/concerned authorities to release the confiscated/seized (pickup) Vehicle bearing registration No. UP44BT4580 in favour of petitioner.”*

3. Learned A.G.A. has filed counter affidavit and in reply thereto learned counsel for the petitioner has also filed the rejoinder affidavit, the same are available on record.

4. Learned counsel for the petitioner further submits that the informant-opposite party No.6, lodged an First Information Report on 06.06.2023 at 15.20 P.M. with the allegation that on the basis of information received from mukhbhir, the informant/Sub-Inspector of Police Chauki Belwai Police Station Akhand Nagar District Sultanpur, reached the spot i.e. village Meerpur Pratapur and apprehended the person standing nearby the PICKUP vehicle bearing registration No. UP44BT4580, who on enquiry, revealed his name as Suresh Rajbhar son of Ram Khelawan resident of Village Meerpur Pratappur District Sultanpur and stated that he was driver of the said PICKUP Vehicle who had been hired by co-accused Gulele Rajbhar to load the stray cow progenies in a Vehicle to be taken to the state of Bihar for slaughter.

5. Learned counsel for the petitioner further submits that the petitioner is the registered owner of the vehicle number *UP44BT4580* and on the basis of First Information Report vide Case Crime No. 155/2023, under Section 3/5A/8 Cow Slaughter Act, and under Section 11 Prevention of Cruelty to Animal Act, Police Station Akhand Nagar, District Sultanpur, proceedings under Section 5-A(7) of the Act against petitioner were initiated and show cause notice dated 24.06.2023 served upon petitioner for calling reply.

6. Learned counsel for the petitioner further submits that the petitioner appeared before the District Magistrate, Sultanpur and submitted his reply on 02.08.2023 to show cause notice denying the alleged incident and the allegation leveled against him. Thereafter, the opposite party No.3-District Magistrate, Sultanpur passed the confiscation/seizer order and the aforesaid vehicle of the petitioner has been confiscated/seized vide order dated 11.08.2023.

7. Learned counsel for the petitioner further submits that thereafter the petitioner against the order dated 11.08.2023 passed by learned District Magistrate, Sultanpur moved an appeal before the opposite party No.2-Commissioner, Ayodhya Division, Ayodhya which has been registered as Case No. 1944/2023: Chandra Sekhar Rajbhar Vs. State of U.P. through District Magistrate”, Computerized Case No. C202304000001944, under Section 5-A(8) Uttar Pradesh Prevention of Cow Slaughter Act, 1955, but the same has been rejected vide order dated 08.12.2023.

8. Learned counsel for the petitioner further submits that the impugned order dated 11.08.2023 passed by the District Magistrate, Sultanpur is totally illegal. He further submits that the learned Magistrate by exceeding its jurisdiction has passed the impugned order on a wrong finding that the confiscated vehicle was used in cow slaughtering or in transportation of cow or its progeny which is totally perverse and the learned Magistrate has not considered the evidence adduced by the petitioner.

9. Learned counsel for the petitioner further submits that no such activities of transportation of the aforesaid cow species were done as per the allegations made by the prosecution but the vehicle in question of the petitioner has been seized in an arbitrary manner.

10. Learned counsel for the petitioner further submits that the petitioner is facing great jeopardize due to confiscated of vehicle by

learned District Magistrate, Sultanpur and his livelihood is depend upon the said vehicle and the said vehicle is the main source of earning and now his family has come at the verge of starvation.

11. Learned counsel for the petitioner further submits that the from the date of seizure i.e. 06.06.2023 the vehicle in question is standing at open yard in the Police Station Akhandnagar, District Sultanpur since long and with the passage of time ultimately it will become junk and after sometime it is not useful for any purpose. Reliance has been placed on the law laid down by the Hon'ble Apex Court in the case of **Sunderbhai Ambalal Desai and C.M. Mudaliar Vs. State of Gujrat, AIR 2003 SC 638**.

12. Learned counsel for the petitioner has further drawn the attention of the Court regarding the provisions of Sections 451 and 457 of Cr.P.C., which is quoted 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.

Explanation.- For the purposes of this section," property" includes-

- (a) property of any kind or document which is produced before the Court or which is in its custody,
- (b) any property regarding which an offence appears to have been committed or which appears to have been used for the commission of any offence.

**457. Procedure by police upon seizure of property.-**(1) Whenever the seizure of property by any police officer is reported to a Magistrate under the provisions of this Code, and such property is not produced before a Criminal Court during an inquiry or trial, the Magistrate may make such

order as he thinks fit respecting the disposal of such property or the delivery of such property to the person entitled to the possession thereof, or if such person cannot be ascertained, respecting the custody and production of such property.

(2) If the person so entitled is known, the Magistrate may order the property to be delivered to him on such conditions (if any) as the Magistrate thinks fit and if such person is unknown, the Magistrate may detain it and shall, in such case, issue a proclamation specifying the articles of which such property consists, and requiring any person who may have a claim thereto, to appear before him and establish his claim within six months from the date of such proclamation."

13. Learned counsel for the petitioner further submits that the petitioner is ready to comply with all the conditions, which the trial court will impose while releasing the vehicle. Undisputedly, petitioner is the rightful owner of the vehicle, therefore, the vehicle be released in his favour and the impugned order be quashed.

14. Per contra, learned A.G.A. submits that the vehicle in question was being used for transportation of bulls illegally at the time of alleged offence and the vehicle in question was correctly seized by the District Magistrate, Sultanpur, vide its impugned order dated 11.08.2023. Thus, the District Magistrate, Sultanpur has rightly passed the impugned order dated 11.08.2023 and there is no illegality and the appeal was rightly dismissed, no interference is required.

15. I have heard the learned counsel for the parties and carefully gone through the relevant legal provisions and the judgments rendered by the Hon'ble Apex Court in the case of **Sunderbhai Ambalal Desai (supra)** and the judgment passed by this court in various cases.

16. The Hon'ble Apex Court in the case of **Sunderbhai Ambalal Desai, AIR 2003 SC 638 (supra)** in para 17 and 21 has been pleased to held as under:-

"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 application 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."

17. In **Nand Vs. State of U.P., 1996 Law Suit (All) 423** this Court has observed that pendency of the confiscation proceedings under Section 72 of the U. P. Excise Act is not a bar for release of the vehicle which is required for the trial under Section 60 of the U.P. Excise Act. It has been clearly observed by this Court in para 7 that:-

"I think it is not proper to allow the truck to be damaged by remaining stationed at police station. Admittedly, the ownership of the truck is not disputed. The State of Uttar Pradesh does not claim its ownership. Therefore, I think it will be proper and in the larger interest of public as well as the revisionist that the revisionist gives a Bank guarantee of Rs. 2 lakhs before the C.J.M., Kanpur Dehat and files a bond that he shall be producing the truck as and when needed by the criminal courts or the District Magistrate, Kanpur Dehat, and he shall not make any changes nor any variation in the truck."

18. This Court further has held in the case of **Jai Prakash Vs. State of U.P., 1992 AWC 1744** that mere pendency of confiscation proceedings before the Collector is no bar to release the vehicle.

19. In **Kamaljeet Singh Vs. State of U.P., 1986 U.P. Cri. Ruling 50 (Allid)**, the same view was taken by this court that pendency of confiscation proceedings shall not operate as bar against the release of vehicle seized u/s 60 of Excise Act.

20. In the opinion of this Court, it is not disputed that the power under Section 451 of Cr.P.C. is not properly and widely used by the trial court while passing the orders. The power conferred under Section 451 of Cr.P.C. be exercised by the trial court with judicious mind and without any unnecessarily delay. So that the litigant may not suffer, merely keeping the article in the custody of the police in the open yard will not fulfil any purpose and ultimately it result the damage of the said property. The owner of the property be allowed to enjoy the fruits of the said property for the remaining period for which the property is being made.

21. Further in the opinion of this Court, the procedure as contemplated under Section 457 of Cr.P.C. be also followed promptly, so that the concerned Magistrate may take prompt decision for disposal of such properties and be released in favour of the entitled person of the said property, keeping the said property in the custody will not solve any purpose and that gives a mental and financial torture to the owner of the said property which is also against the law and against the principles of natural justice.

22. As per the legal propositions mentioned above and keeping in view this fact that undisputedly the petitioner is the registered owner of the seized vehicle and the ownership of the vehicle is not in dispute neither the State or any other person has claimed their ownership over the vehicle, therefore, no useful purpose will be served in keeping the

vehicle stationed at the police station in the open yard for a long period allowing it to be damaged with the passage of time.

23. In view of the above facts and circumstances of the case, the impugned orders is not sustainable in the eye of law and requires interference by this court.

24. Accordingly, the present petition under Article 227 of the Constitution of India is **allowed** and the impugned order dated 08.12.2023 passed by the Commissioner, Ayodhya Division Ayodhya in Appeal No. 1944 of 2023, Computerized Case No. C202304000001944, Chandrasekhar Rajbhar Vs. State of U.P. and order dated 11.08.2023, passed by the learned District Magistrate, District Sultanpur in Case No. 1860 of 2023, Computerized Case No. D202304680001860; State Vs. Suresh Rajbhar and others are set aside and reversed.

25. The District Magistrate, Sultanpur is directed to release the vehicle in question forthwith in favour of the petitioner. The petitioner is directed to give a bank guarantee of Rs. 50,000/- before the Chief Judicial Magistrate, Sultanpur and file a bond that he shall be producing the vehicle as and when needed by the criminal courts or the District Magistrate, Sultanpur, and he shall not make any changes nor any variation in the vehicle.

26. No order as to costs.

27. Let the copy of this order be sent to the court concerned for its compliance.

**Order Date :- 21.03.2024**

Arvind

**(Shamim Ahmed,J.)**